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From the Author

PRINCIPLES

OF THE

CONSTITUTION OF GOVERNMENTS.

THE AMERICAN

CONSTITUTION OF THE UNITED STATES

AMENDMENTS

OF 1791

CONSTITUTION OF GOVERNMENT

PRINCIPLES

OF THE

CONSTITUTION OF GOVERNMENTS.

BY WILLIAM CUNINGHAME, ESQ.

OF ENTERKINE, NORTH BRITAIN.

“ THE DISCORDANCE of the opinions entertained by the ablest men on the subject of NATIONAL POLITY, proves that the PRINCIPLES of NATIONAL ORDER, are involved in great obscurity. At any time, then, he, who should elicit those PRINCIPLES, from the darkness which surrounds them, and exhibit them with truth, and perspicuity to the Public, would deserve to be ranked among the benefactors of mankind : but, at a time like the present, when Europe and the World lie panting and exhausted in a war marked by characters of peculiar horror, and induced by differences of opinion, respecting these very PRINCIPLES, the benefits of such an inquiry, if attended even with partial success, would be incalculable.” Monthly Review, May 1800. Vol. 113. p. 34.

Δεῖ δὲ τὸν ἀγαθὸν κριτὴν οὐκ ἐκ τῶν παραλειπομένων δοκιμάζειν τοὺς γράφοντας, ἀλλ' ἐκ τῶν λεγομένων
POLYB.

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DEDICATION

TO THE

RIGHT HONOURABLE

THE LORD GRENVILLE,

&c. &c. &c.

MY DEAR LORD,

PERMIT me to dedicate this Work to you, as a tribute of friendship---I certainly do not trespass upon the bounds of sincerity, when I say, that I offer it to the person in the Three Kingdoms, whom I hold the best qualified to judge of it. Nor

is the interest of this circumstance diminished by the remembrance of our connection at the University, when I had an opportunity of beholding those Virtues and Talents, which have since, been so powerfully developed—I am, my dear Lord, with sentiments of the highest regard, and esteem,

Your Lordship's

Most faithful

and most devoted humble Servant,

THE AUTHOR.

PREFACE.

IN the year 1789, a Revolution took place, which among all the extraordinary consequences it occasioned, was in none more remarkable, than in the discussions it gave rise to, on the subject of POLITICS—It did happen, that the very first PRINCIPLES of GOVERNMENT, were brought into agitation—But it also happened along with this, that they were treated in such a manner, as shewed the infancy of men's knowledge on these subjects—We talk not of the irritation that was produced by the heat of Party—We talk not of the extravagances into which each was betrayed by the intemperance of the other—These consequences will vanish,

and have vanished with the cause that produced them—We speak of the sober conclusions of men who were disposed to reason coolly, and the difficulty they found in arriving at truth on the subject.

It then evidently appeared, that **POLITICS** had never been studied as a **SCIENCE**—For how did the World stand? As far as any thing went in antient times, in **HOLY WRIT**, Government was not connected with Politics at all, it was the immediate Appointment of **GOD**—In the Pagan World, in the rude ages, it was interwoven with their Mythology—It rewarded Patriotic services, for which their Authors were deified afterwards, or recompensed Military valour—In more advanced periods, something like Constitutions were formed, but they had rather the rude elements of Government in them, than Government itself, and so they shewed by their Revolutions, and Convulsions.

And if their Constitutions shewed those shades of distinction, so did the Opinions of their Writers—It was

rather taking up ideas by fits, and starts, than any complete, and comprehensive System—Even Aristotle, with that wonderful mind he possessed, amidst the multitude of subjects he embraced, seems rather to have given hints at POLITICS than a System of POLITICS—One time, it is restraining a NOBILITY—Another time, a KING. Another time a PEOPLE, but no where does it seem **THAT COMPLETE STRUCTURE**, which is formed to give man happiness in Government—And the universal testimony of their Authors, at least the most remarkable among them, pronounces it a Desideratum.

Then came the Middle Ages—These were the Reign of Arms—The ideas of GOVERNMENT were enclosed in steel—A King was a General—A Nation an Army—This was the Feodal System—A Crown was literally fought for as a Military Prize, and States became the Meed of the most Fortunate Valour.

Upon this Stock, various Constitutions were grafted—All, inclining differently as the Nation either turned to

arms, or, resigned to the gentler occupations of Commerce—It was this that softened down the Feodal System. As the arts of Peace flowed in, those of War declined, and then it was, that there was something else seen in Europe, than Soldiers.

But still amongst all these changes, the real ideas of **GOVERNMENT**, never appeared—The **NATION**, far from being considered as the basis of it, was never thought of at all—Public happiness was never seen—The general Weal never entered into calculation—Men might court their firesides, more than the camp, they might live at home, more than in the field—But still they were not Citizens. They were the Servants of an Absolute Prince, and they obeyed him as a Master, if they did not follow as Soldiers.

It was strange to see the curious shades that these ideas took, according to the Countries they prevailed in.—In England, where Commerce had a little advanced, the ideas of Government developed along with it—Till at last, a

Revolution gave them an opportunity of appearing in some degree, towards the end of the 17th Century—The Country divided.—One half of the Kingdom, maintained that Power was a Trust given for a Nation's Happiness, and the other, that it was a Property that could never be recalled.

But still this was only one point in GOVERNMENT—This only respected the Power in the Rulers, but did not say who those Rulers should be—It spoke of the manner of recalling Power, but not of so distributing, as to secure the Public Weal.

At last the French Revolution took place—That gave men's ideas an opportunity of completely shewing themselves—Here, the great oppression in France, led to the overturning every thing. And here again, men took different sides—And if one was wrong before, so were they both now—One set maintained, that there was an Universal Innate Right in every Individual in every Country to Power, so that he must be consulted about making a Government, and might overturn those which he had not

made, or joined in making—The other, that the Nation had no right to enquire how Power was exercised.

And what was curious, when each side was refuting the others' absurdities, they thought they were establishing their own—They regarded each other with the most implacable hostility—Condemned as the worst of madmen, and fools, and this because, as they said, it was on a subject the most important of all other's, to man's human happiness, that they committed these mistakes—With all, shewing in the manner in which they discussed it, that the **FIRST PRINCIPLES** in **POLITICS**, "**FAIRLY UNDERSTOOD, UNIVERSALLY ACKNOWLEDGED, and PROPERLY BOUNDED,** were yet a **DESIDERATUM.**"

And the proof was this—Are there not in every **SCIENCE, ESSENTIAL**, properly called, **PRINCIPLES**, which every man allows, which he would be thought almost mad, if he were to controvert, and which in truth, are beyond controversy? Are there not **SUCH**? And if there

be, were there **THESE** in **POLITICS**? So far from it, that we found men disputing about **THESE VERY PRINCIPLES** every day—Nothing fixed—Nothing firm—Nothing settled, or acknowledged—“Then **POLITICS** were not a **SCIENCE**.”

Now, if this was the case, was it not to be desired, that some attempt should be made at constituting them such? Not, we will say, to make a Complete, by any means, Universal, or Perfect System, but some hints towards a Structure? Somewhat that should redeem them from the state of uncertainty under which they laboured, and give them a species of consistency, and firmness?

And that was the intention of the Present Work. To take them up from the **FIRST**, and most **PRIMITIVE PRINCIPLES**, not of **THEM**, but of **ALL THINGS**—To proceed step by step, so that it might be fairly seen, where any Error was introduced—In a word, either to force **FALSEHOOD** to fall, or **TRUTH** to be established.

And so it has been pursued step by step—Let not then

any one be surprised, at the apparent homeliness with which the Work sets out—We believe, without vindicating any merit on this ground, but merely encountering as an objection, that the same murmur lies against all SCIENCE—It must be plain at the beginning—The symmetry of the Building is not to be looked for under ground—The beauty of the Architecture, if any, must appear afterwards.

So much as to aught apparently obsolete, in the first Chapters—As to the Plan of the Work, it was originally intended, to consist, of CONSTITUTION, and LEGISLATION—To DEVELOPE the FIRST PRINCIPLES, upon which Government is founded, and then the RULES for carrying it on—Whether this plan will ever be executed in its full extent, or more of it, than is now offered to the Public, the Author cannot say—It depends upon Circumstances not under his controul.

But one thing he will say—The Original Idea, the first Incentive to it, was to DISCOVER TRUTH—If any

have been found, the Author will rejoice, that he has in any degree contributed to what is profitable for man, in any way conduced to the advantage of his Species—If on the contrary, it should be a System of FALSEHOOD, and ERROR (for good, or bad, System it is) let it fall, the Author will be contented. Only, “LET TRUTH BE ESTABLISHED IN ITS ROOM”—Then indeed he will rejoice—As his first Motive was to attain that Object, so will he be better satisfied that another’s should be fixed, than that his Falsehood should live, even if it were possible—Under a more sanguine view of the subject, if some part should be sound, but all imperfect, he will still congratulate, if it only be the means of inducing another to finish—Too happy even then, to have accomplished even this good, to have elicited another to the attempt, and whoever he be, may he conclude under happier Auspices!!!

ERRATA.

- Page 7 dele $\tau\upsilon$ in second Greek quotation
- 28 line 7, from top, for 'prescribe' read 'proscribe'
- 40 line 4, for 'here' read 'there'
- 56 second paragraph, line 1, for 'privileges they are' read 'privileges then are'
- 69 Greek note, line 2, for $\sigma\upsilon$ $\alpha\upsilon\tau\omicron\iota$ read $\sigma\iota$ $\alpha\upsilon\tau\omicron\iota$
- 78 line 5, read *them* instead of *hem*
- 79 for $\epsilon\lambda\alpha\upsilon\epsilon$ read $\epsilon\lambda\alpha\zeta\epsilon$
- 87 line 4, for ORDER read ORDERS
- 102 first Greek quotation in notes read $\epsilon\pi\epsilon\kappa\rho\alpha\tau\eta\sigma\alpha\iota$ for $\pi\epsilon\kappa\rho\alpha\tau\eta\sigma\alpha\iota$
- 120 line 6, reference to note * at 'one way *.'
- 123 reference to note ‡, end of first paragraph 'equal manner ‡'
- 127 line 7, second paragraph, for 'deserve' read 'desire'
- 129 reference in note * must be to note Ch. XXI.
- 151 in margin, line 4, for *Executive* read *Execution*
- 152 end of second paragraph, read taking up at Law, *Civil rights were the subject of Government*
- 165 end of second paragraph, read 'on LAW or DICTATION'
- Ibid. line 6, from bottom, read 'how far it is superior'
- 167 margin, line 4, read CIRCUMSTANCES used as proofs
- 171 line 5, from top, read 'must be done directly'
- 174 line 5, from bottom, read 'correspondingly in Contestations'
- 178 line 4, for 'the Minor application' read 'the Minor applications'
- Ibid. line 8, from bottom, for 'to among men' read 'among men to'
- 181 line 8, from bottom, for 'preserved' read 'perceived'
- 182 in note, for EYMΘEPON read ΣYMΘEPON
- 186 third paragraph, last line but one, dele 'to be judged'
- 189 1st line, 2nd paragraph, read 'qualification on its limits—In all,' with capital I

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BOOK I.
OF REAL RIGHTS.

CHAP. I.

THAT THERE IS AN ORIGINAL RIGHT.

IN every science or branch of knowledge there are things which admit of more or less dispute, and which men consider more or less, before they assent to. But this arises from something partial in their nature, that they depend upon some particular fact, point, or circumstance. Wherever they stand upon general grounds, wherever they are built upon enlarged PRINCIPLES, the assent to them is immediate and prompt, at least, if there be the smallest knowledge or acquaintance with the subject.

General points of knowledge admitted at once, where the subject the least understood.

And if this be the case with any subject it surely is with the present, for what idea can we entertain more enlarged, what notion more extended than that of an original and unvarying RIGHT?

Certainly the case with an original RIGHT.

Whoever then should hear this PRINCIPLE stated, might be expected to yield his immediate and instant assent to it, seeing that it is exemplified upon every occasion, that it appears in almost every occurrence.

Exemplified on every occasion.

But may not
strike men
with the
proper con-
clusions.

As these exemplifications, however, may escape many, or rather that being perceived they may not strike them with the proper conclusions, it may be expedient to notice some of them. Especially as they contribute to establish a PRINCIPLE so important, and of such serious consequence as this.

Manifesta-
tions of it in
history.

To begin, then, with the most obvious manifestations of it, are we not sensible that in perusing history we condemn many actions involuntarily, without the information of any law, and without the sentence of any judge? When we read the story of Lucretia do we enquire about the laws against rapes at Rome, or do we boil at once with indignation against Tarquin? When we read of Virginia in the same history, do we not experience similar sensations against Appius Claudius? When we hear of the fate of Socrates, do we enquire about the institutes of Athens, or do we condemn at once the injustice of the Athenians? From whence can this arise, but a secret monitor in our own breasts, a private adviser in our own bosoms?

We approve
or disap-
prove of the
actions of
men, in cases
where the
laws are si-
lent.

Another thing is, that in the common occurrences of life, we in like manner approve or disapprove of the actions of men, in cases where the laws are totally silent. Where we have no public rule to direct us, no acknowledged institute to guide us. From what again can this arise, but the private operation of the same cause, the secret effect of the same PRINCIPLE?

Told per-
haps that we
got this sen-
timent from
education,
but where
did educa-
tion get it
itself?

We shall be told, perhaps, that we got this sentiment from education. But where did education get it itself? From what spring did it draw it, from what source did it deduce it?

Either insti-
tuted by
man, or or-
dained by
GOD.

Education was either instituted by man, or ordained by GOD. If ordained by GOD, GOD must have ordained it from the beginning. If instituted by man, man must have instituted it according to his feelings.

In either
case, RIGHT
original.

And what were these feelings? An original feeling of RIGHT. But an original feeling of RIGHT is the same as an original RIGHT according to all human ideas. In either case, then, RIGHT must have

been original, if ordained by GOD as above stated, it must have been from the beginning; if instituted by man, it must have been from the beginning also.

But it is not only from this, that we can shew the original existence of RIGHT, but from the absurdity of supposing the contrary, and that in the whole system of RELIGION, the VIRTUES and MORALS.*

Absurdity of supposing, the contrary in RELIGION, the VIRTUES, and MORALS.

To begin with RELIGION, what is that? It is paying the duty to GOD which we owe to him. But if RIGHT be not original, what made that duty? It must have been man. Man made RELIGION! Can there be a more impious or blasphemous absurdity?

In RELIGION.

Again, as to the VIRTUES, what becomes of them? What is patriotism, for instance? It is the feeling and doing what we owe to our country, for the many benefits conferred upon us. For the land it gives to nourish us, the parents to cherish us, and the friends to support us. It is our first, and *alma mater*. For the force it affords to defend and protect us. For the opportunities it gives to enjoy all the blessings and comforts of life. Are all these nothing? Yet for all these, according to this system, we owe nothing; at least, we must first go and ask some professor of moral duties.

In the VIRTUES. Patriotism.

Again as to filial piety, what becomes of that? Our parents, to be sure, begat us.† They brought us up from our tender years, watched over our infancy, and bore all the perverse humours of our childhood,‡ rearing us up to maturity, and manhood. But all this is nothing, we owe nothing for all this till we inquire into the nature and extent of our obligation.

Filial piety.

Again, as to conjugal affection. The tie is tender, the union close, the call for mutual support and comfort, pressing, and urgent.

Conjugal affection.

* RELIGION is what is RIGHT as to GOD, MORALS what is RIGHT as to men, including of course the VIRTUES as being exemplified in different situations of men.

† Εφυσαν.

‡ Δυσκολοιαν, toward, see Memorabilia of Socrates, as to the duty imposed upon us thereby, when his son is complaining of the ill usage of his mother.

But still this is nothing, we can feel nothing of all this whatever we may have learnt, we can feel no natural obligation upon the subject.

Friendship.

Then again as to friendship. It matters not how many exertions have been made, what efforts have been strained; the multitude, or the energy of our obligations. All these are to be confounded in one common mass of oblivion; we are to feel no pungency, no incitement to gratitude, no desire of retribution, we must be an absolute sheet of blank paper, till some duty is imposed upon us.

In MO-
RALS.

RIGHT if
not original
need not be
universal.

So much for the VIRTUES. In the same way as to MORALS, of which the former are the exemplification. Every one must see that the idea of RIGHT not being original must put a total end to them. If RIGHT be not original, then it need not be universal, for if not original it need not be true, and if not true it need not be universal, and if so there may be two RIGHTS in the world, at the same time. What is to hinder it? The inhabitants of Europe may have one idea of RIGHT and those of Africa another, since there is no common original standard to refer to: This is plainly contrary to our idea of MORALS, which is to be uniform and one.

All must be
referred to
the dictates
of men.

Another thing is, that if RIGHT be not original, all must be referred to the dictates of men, since there is nothing else to approve, or condemn any thing. Nothing could be WRONG, till a system of ethics was found to reprobate it. Nothing guilty till a code of laws was framed to condemn it. Before the institution of such laws murder, and house-breaking must have been good, or at least, indifferent things. JUSTICE must have been founded upon laws, not laws upon JUSTICE. How far this is consistent with reason, we shall leave others to determine.

Opinions of
men have not
varied upon
RELIGION, the
VIRTUES,
and MO-
RALS, as

But what plainly shews that RIGHT is original, is, that the opinions of men have not varied upon RELIGION, the VIRTUES, and MORALS, as they have done upon other subjects. They have varied, it is true, but they have not varied in the same manner. If different nations have entertained different notions of the Deity,

they have all agreed in thinking that some worship was due. If different philosophers have cherished different opinions of certain virtues, they have all agreed in thinking that some were the same,—if the Stoics and Epicureans differed in their ideas of the manner of pursuing happiness, still their notions in GREAT MORALS were uniform and one. Neither would have held it honourable to steal, neither to betray one's parents, one's friends, or one's country. So that it was not a difference as to a PRINCIPLE, but the application of a PRINCIPLE: not a difference as to the point of its being RIGHT to please the gods, but as to the manner of pleasing the gods. But it will be said, perhaps, that this was the same thing.—By no means. The manner of doing a thing, must always remain a subordinate consideration, while whether to do it or not is the real and essential point. In this, then, in the PRINCIPLE, they always agreed. Now was this the case in matters of science? Certainly not. At one time, one half of mankind believed the world to be a flattened round (if we may use the expression), and the other of an elliptical figure, and it was not till after repeated demonstrations on the subject, that they coincided in the former point. And this very naturally, because knowledge is matter of instruction, and men will only learn it as they are instructed. But feeling is a totally different thing, they get that from PROVIDENCE, and they have no occasion for any other adviser.*

We are aware, that it may be objected here, that whole nations have differed in their ideas of RIGHT, and that therefore it cannot

If nations have differed in their

* In this appears the difference between matters of science, and matters of feeling.—Matters of feeling depend upon nature, that is, our formation by PROVIDENCE, which is ever true; matters of science upon the conclusions of men, which are ever fallacious. It may be added here, that bare coincidence is neither a proof of truth, nor want of it of falsehood. At one time all men believed that the sun went round the earth, and at another, one half of them denied that it was a flattened round, but neither of these beliefs established positively, or negatively. Natural or necessary coincidence is a proof of truth, and the want of it of falsehood.

ideas of
RIGHT,
proceeded
from local cir-
cumstances,

be uniform, as we would have it. But we will undertake to say, that wherever these differences have taken place, the variations have proceeded from some particular fact, or local circumstance, some prejudice, or partial institution, and not from the application of general PRINCIPLES. At Sparta, for instance, if theft was encouraged and promoted in the youth, as an exercise of skill and ingenuity, it was esteemed part of their military education. If in Turkey it was no uncommon circumstance to submit with alacrity to be put to death by the Grand Signor, it was because a death at his hands was considered as a passport into Paradise. But is it to be supposed, that in these countries, other things would not have remained on the same footing? That at Sparta, it would not have been held dishonourable to cheat a man of his estate, or that in Turkey, murder would not have been condemned, and punished? These things then, are always doubly refuted; first by the great majority of the rest of the world, in every given case, and then by the practice of the nation itself in other instances.

Always
doubly re-
futed.

We are con-
scious
of the unity,
consequent-
ly the origi-
nality, of
truth in mat-
ters of rea-
soning, why
not in MO-
RALS?

There is still one remaining proof upon the subject. We are conscious of the unity, and consequently the originality, of truth, in matters of common reasoning, and perception. No man believes, nay can conceive that a thing can be, and not be, can be round and square, long and short, at the same instant. Why then any more, that it can be RIGHT and WRONG, proper and improper, honourable and base? We have the same strength of repulsion, the same shock of revolting, the same consciousness of incongruity in the one case as the other.

Therefore,
under GOD
an original
RIGHT.

It is then clear as day, that, under GOD, there is an original and unvarying RIGHT, complete, perfect, and independent, self-sufficient,* antecedent, and paramount, not controuled, but under HIM, controuling all things. It is of this RIGHT that Aristotle speaks

* Αυταρχης.

when he says that men learn it from no compact or convention, but have it by a kind of natural intuition; * also Cicero.† It existed always,

Οὐ γὰρ τι νυν κ' ἀχθεῖς ἀλλ' ΑΕΙ ποτε

Ζῆ τῆτο

SOPH.

It could be ascribed to no origin with the antients, with us proceeding from GOD.—

καὶ κτεῖς οἶδεν ἐξ ὅτε τυ φανη.

Ibid.

And it is universal;

Ἀλλὰ το μὲν πάντων νομίμων δια τ' ΕΥΡΥΜΕΔΟΝΤΟΣ

ΑΕΡΟΣ πνεύματος τεταται, δια τ' ΑΠΛΕΤΟΥ ΑΤΤΗΣ. Vet. Poet.

And this original RIGHT is the fountain of every excellence, and virtue. It is the main PRINCIPLE from which they proceed, the chief source, from which they spring and issue. It is then highly erroneous to distinguish them, as if they were essentially and materially different. They are all branches of the same stock, all applications of the same PRINCIPLE.

Fountain of every excellence and VIRTUE.

CHAP. II.

THAT THERE IS AN ORIGINAL JUSTICE.

THIS is a consequence of the former. For what is our idea of JUSTICE? To give every man his own—*Suum cuique tribuito.* And

an application of RIGHT.

* Εστι γὰρ ο' μαντεύεται τι πάντες φύσει κοινόν ΔΙΚΑΙΟΝ, καὶ ΑΔΙΚΟΝ, κ' ἂν μηδεμίᾳ κοινῶν πρὸς ἀλλήλους ἢ, μηδὲ ΣΥΝΘΗΚΗ. Περὶ Ρητ. p. 60. Oxf. Ed.

† Est enim hæc non scripta, sed NATA lex; quam non DEDICIMUS, accepimus, legimus; verum ex naturâ ipsâ, arripuimus, hausimus, expressimus; ad quam non DOCTI, sed FACTI; non instituti, sed imbuti sumus.---Cicer. pro Milone.

what is his own? What it is RIGHT and fitting that he should have. JUSTICE is then an application of RIGHT. It is then original.

CHAP. III.

THAT ORIGINAL JUSTICE ENTITLES TO LIFE, PROPERTY, AND FREE AGENCY.

JUSTICE is the idea of giving every man his own. If this be our idea of JUSTICE, what can be more a man's own, what can be more RIGHT and fitting that he should have than the Life, that he gets from GOD,* which he is indebted to no man for, and which he must consequently hold independent of him. Nothing can be more his own, more peculiarly and exclusively attached to him. Life then is the first thing to which a man is entitled by original JUSTICE.

Next is Property.

The next thing is Property or substance. If a man have a right to hold Life, and to possess the gift which he gets from GOD, so also has he to use and employ it. To use and employ it in acquiring store, and providing for the purposes of his subsistence. And when this store is acquired, it is his by the same right, as the Life that got it. For why has he this Life? Because GOD gave it him. And why should he have the use of it? Because GOD intended (with all deference be it spoken) that it should be used, and gave it for no other purpose. And labour is nothing else than the use of it in some way,

* It ought to be stated here that the very idea of JUSTICE is the gift of GOD, for whatever a man has a right to in any state of society, proceeds from something that GOD gave him. What other idea can we have of the GODHEAD, than that RIGHT proceeds from it. To begin then thus: IT gives a thing, then there is an original right to it. Whatever then IT gives there is an original right to, and whatever there is an original right to IT must have given. For on the one hand, as IT is the fountain of right, so on the other IT is the only fountain.

or other, and if so, it is labour that acquires all Property, labour either of the body or mind, and that from the first idea that was ever conceived or acorn that was picked up in the field, to the last effort of intellectual ability, or personal exertion. All Property is labour in one way or other. Property then, is the second thing, which a man holds of GOD, and he holds it by the same tenure as his Life, that is, original JUSTICE attaching to it, and fixing indissolubly with him.

The third thing is Free-agency, and this is as firmly secured to him, as either of the two former. If it be fitting and RIGHT that a man should hold and use that Life which he gets from GOD, so is it equally, that he should enjoy it, unless indeed it be supposed, that in giving him Life, GOD meant for him a gloomy and thankless gift, which cannot be conceived, nor imagined a moment. And if the contrary was intended by GOD, surely the enjoyment of that Life depends upon the free disposal, and mastery of his actions, in which also is included that of his thoughts, for the free expressing, manifesting, and entertaining of a man's thoughts as long as they do not HURT another*, contributes clearly to the enjoyment of his existence: Free-agency, then, is the third thing, which a man holds of GOD, which he holds independent of man, and which is secured to him by the same tenure, as either of the two former.

Next is Free-agency.

These then are the three rights of man, Life, Property, and Free-agency, they are necessary, and they are all that are necessary for his happiness. They are all that are necessary for his happiness, because they include either the existence which he gets from GOD, or the free use, or the relish and enjoyment of it.

These three things are necessary, and all that are necessary for his happiness.

* It is to be observed that this boundary, or rather rule, CONFIRMS and SECURES all the rights. If I Live, I have no right to murder another; if I hold Property, I have no right to rob from another; if I enjoy the Freedom of my actions, I have no right to restrain another. But then, it would not add to my right to Live, that I murdered another, nor to my right to hold Property that I robbed from another, nor to my right to enjoy the Freedom of my actions that I restrained another, while such a latitude would effectually take away his rights, aye, and mine too.

CHAP. IV.

THAT LIFE, PROPERTY, AND FREE-AGENCY ARE PARAMOUNT TO GOVERNMENT.

IT appears from the foregoing,

That Life,
Property,
and Free-
agency are
paramount
to govern-
ment.

I. That these rights of Life, Property, and Free-agency, are (with reverence be it spoken) from GOD.

II. That being from GOD, they are insuperable.

III. That they are more particularly independent of government. Being of an origin superior to man, they can never yield to any thing that is of man.

IV. That they extend to all equally. The same JUSTICE that gives them at all, gives them universally.

V. And lastly. That they are natural, that is, given by PROVIDENCE, and consequently most real. Existing antecedent to all things, and consequently preceding every thing artificial, what else can they be?

BOOK II.

OF PRETENDED RIGHTS.

CHAP. I.

IF ORIGINAL JUSTICE ENTITLE TO AUGHT ELSE BESIDES LIFE, PROPERTY,
AND FREE-AGENCY.

LIFE, Property, and Free-agency comprehend all that a man gets immediately from GOD, as they include either what he receives from him directly, or the use of it. All the rest then, he must get through man, that is, through other men. He can then have no original title to it.

Is there any thing besides Life, Property, and Free-agency, that a man gets immediately from GOD? Nothing. He can then have no original title to it. What is it that constitutes originality of title, but having so received from GOD? What is it that gives man an original title to Life, Property, and Free-agency, but the having thus received, and that it is therefore fitting and RIGHT that he should have them? The sole question then, will be, if he have so received aught else from GOD? He has so received nothing.

And if he have so received nothing else from GOD, as we said,

no original
title to it.

he can have no original title to it. At the same time, as there are some things to which he has been supposed more immediately entitled than others, it will be proper to notice them. Among these, the chief that have been insisted on, are equality, power, and independence of government. Equality, the right of being equal, power, of having power, and independence of government, of living out of government. These are the chief that have been urged. We shall then discuss them severally.

Supposed
sometimes to
have a right
to equality,
power and
independ-
ence of go-
vernment.

CHAP. II.

THAT ORIGINAL JUSTICE DOES NOT ENTITLE TO EQUALITY.*

Inequality in
the situations
of men arising
from
riches, from
rank, or from
power.

INEQUALITY in the situations of men, arises from three things, from riches, from rank, or from power. From riches, which confer affluence, from rank, which confers honour, or from power, which confers authority. All the inequalities in the situations of men, will be found to arise from one or other of these things.†

The simple question then will be, whether original JUSTICE require that these things should be levelled, whether it give every man a title to be precisely and perfectly equal in these respects.

All riches or
property ac-
quired by
labour.

And first as to riches, we know very well, that they are Property, and that Property is acquired by labour, or the application of our existence either bodily or mental, from the first idea that was conceived, or acorn picked up in the field, as above stated,‡ to the last

* Not as measuring things, though it does to it, as measuring rights. We shall see presently.

† These are the only inequalities that could have ever been intended to be levelled, for as to talents, or any thing natural, you might as well attempt to stop the winds, or smooth the ocean.

‡ See Book I. Ch. III.

effort of intellectual ability, or personal exertion. All Property is labour, and if riches be this application of our existence, if Property be acquired by, or be, labour, what has any one to say to it, what has any one to do with it? Would it not be against that JUSTICE, which secures to every one the fruit of his own industry and exertions, the use of what he gets from GOD, to meddle with it? Therefore against original JUSTICE, to meddle with it.

The next is rank.* Now what is rank? Dignity and honours. And how were these dignities and honours acquired? Look into the most remote periods of history, and you will find that they were the rewards of patriotic exertion, of some eminent service, which a man had rendered his country, and for which he reaped in return these honours and dignities. Why then, they both take their rise in the same source, they both originate in the same PRINCIPLE. As wealth was acquired by industry, or labour, so are honours and dignities by a more vigorous and effective discharge of our duty. Both then Rank acquired by our exertions also.

* Rank is an exemplification of natural or real right, which requires a certain state of society to produce it. But this is no proof, that there may not be a natural right to it, as far as here described, but only, that that right could not be exemplified till a certain situation of things. As Montesquien says, "The rays of a circle would have been equal, though a circle had never been traced."—See B.III.Ch.I. This is worthy of notice. It is thought by many, how could we have ideas of a circle before it was traced? But yet it is certain, that a "circle is not the line that traces it, any more than that "JUSTICE is the men that it exists between." Yet it is not possible for us to conceive what JUSTICE would have been independent of men, or the rays without the tracing of a circle. But the non-possibility of conception is no proof of the thing not being, it is only of the finiteness of our ideas, while our strong conviction that "JUSTICE is not men," or a "circle, a line," shews both the one, and the other, or rather truth, to be independent of its exemplifications. All we can say on this subject, is, that there are certain things, which we cannot conceive. There are certain numbers so immense, that we cannot conceive them. Is that a proof that they do not exist? It is not. The solid testimony of arithmetic shews that they do exist. Or what do we say to ETERNITY? Are we convinced that that exists? Yet can we conceive it. Or does it not exist, because we cannot conceive it? Then comes the argument "that every thing is unreasonable, that is not according to the things of this world." But if reason be the rule, why is reason confined to things of this world more than any other world? If reason be not the rule, why do we talk at all? Nor let it be said that we are then to conceive contradictions, a thing "being and not being," "being long and short," at the same time, &c. for what is to prevent it, but the ideas of this world? No, the ideas of any world, reason, consistence, congruity.

Comes therefore nearly under the same rule.

Power not considered here.

Equality not only not sanctioned by original JUSTICE, but directly adverse to its most obvious principles.

How then ever supported?

Nothing, men appearing to be born equal.

being the application of that being, which we received from GOD, both must entitle us to the same, or nearly the same fruits, both must be regulated by the same, or nearly the same PRINCIPLES.*

The last is power.† But we need not discuss now, whether there be any right to this, as “an object of equality;” as we are just preparing to enquire in the next chapter, whether there be any right to it at all.

Thus far then for equality. It is clear, clear as day, that the notion of equality, is not only not sanctioned by JUSTICE, but directly contrary to its most obvious PRINCIPLES. It is so contrary to them, that we are at a loss to conceive upon what ground it could have ever been erected. The only thing that seems to give it any colour is, that it would appear consonant to the principles of equity, that every man should be put upon a precise par, and level. But while it seems to promote this equity, it in reality strikes at a far more essential, and that is an “equity of right,” or of allowing every man to possess and enjoy what he has secured by his own labour, or the use of that existence which he got from GOD, of permitting him to retain what he has acquired by his own exertions. This is an equity far more consonant to our feelings when we come to examine it. How then could the other have ever been supported? Because men, it seems, were born equal, and therefore they were ever to remain so in society. Were they, and for what reason? Was this an equality produced by REASON, i. e. the reason of that situation extending to the after purposes of life? Could any man have continued it a moment, or have stopped his neighbour

* Though acquiring rank be an application of our existence, yet it is different from acquiring Property. Property is acquired by the individual himself, (proprium) and for individual purposes, but rank is acquired by the individual to be sure, but for public purposes as far as the public is concerned. Being then, as to the public, a public honour, it must be taken as the public chuses to give it. But still it is equally distant from division, equally far from an object of equality. As far as private, it is appropriate, as far as public, it is regulated.

† This is entirely public, as we shall see presently.

from earning and acquiring? He could not. It would have been interfering with the real rights of man, the rights of Life, Property, and Free-agency, the right of acquiring Property, and providing for the purposes of his subsistence. Why then, it was an equality good for nothing, an equality of poverty, an equality of privation of all the comforts of life, an equality of every one being left to his own exertions, and to be got rid of, and got rid of as soon as possible, by reason of our talents; an equality totally irrational, as such, totally irrelevant to our present purpose, and to all purposes, and not to be argued from in any shape. As well might it be inferred, that because all birds are unfledged at first, or have the same callow down, that therefore, they should have no increase, or variety, of plumage afterwards.

But besides all this, it might be seen, methinks, from the natural constitution of man, that this equality was never intended. If it had been intended, is it not natural to suppose, that these talents and qualifications which are fitted to secure the objects of it, would have been distributed in equal proportion? And yet this is so far from being the case, that we see the utmost disparity possible in those qualifications. Why then is not this the clearest demonstrative proof, the most decisive evidence, that this equality was not intended? But into the inscrutable will of PROVIDENCE we are not to search; our business is to take these lights which HE has been pleased to give us. And what are these lights? "The lights of our reason assisted by HIM, which we call PRINCIPLES." Taking then these PRINCIPLES as our guide, we say, that in no one way, is man entitled to equality, on the ground of original JUSTICE. That original JUSTICE, so far from sanctioning, or authorizing it in any shape, is most positively, and directly hostile to, most decidedly, and diametrically against it.

Might be seen that this equality never intended.

Directly adverse to the most obvious PRINCIPLES of JUSTICE.

CHAP. III.

THAT ORIGINAL JUSTICE DOES NOT ENTITLE TO POWER.

Power, the
idea of
authority
over other
men.

How then
original
JUSTICE
entitle to ?

Enquire if
conferred by
GOD.

How so con-
ferred.

POWER is the idea of having command or authority over other men,* of directing and regulating their actions, so as to render them subservient to our inclinations.

And if this be our idea of power, it may well be asked, what original claim any man can have to it? How original **JUSTICE** furnishes any right, how it affords any title or pretension to it?

And here we may observe, that a short way of knowing, whether original **JUSTICE** entitle us to a thing, is, to enquire, whether it be conferred upon us by **GOD**, and therefore, originally unjust, that it should be taken from us; for wherever a thing is so conferred upon us by **GOD**, original **JUSTICE** entitles to it, and wherever original **JUSTICE** entitles to it, we may be sure that it is so conferred. For it appeared plainly in our third chapter of first book, that these were convertible terms. For how can it do otherwise than inevitably follow, if a thing be conferred by God, that original **JUSTICE** does entitle to it, **GOD** doing inevitably **RIGHT**; and if there be such a title, from what source can it spring but from **GOD**, **GOD** being the only Being that can give such a title? So that the cause proves the consequence, and the consequence the cause. The tree proves the fruit, and the fruit the tree. Taking then the subject in this way, how is power one of the things conferred upon us by **GOD**? Has **GOD** given a right to any one man to govern the rest of his species? Has **HE** given a title to any one to command another, any more than to another to command him? Or is power, Life, or is it Property, or is it Free-agency? Is it either the holding of our existence, or the use of it, or the relish

* In a human sense.

of it? A man may say, indeed, that he believes by having power he should be happier, but would he really be so? Is it any proper (proprium) enjoyment of his existence? Is it any enjoyment properly confined to himself, separated and detached from others. On the contrary, it depends upon the command of others, and therefore cannot be proper or peculiar to the person so wanting the command. Power then, is neither the holding, nor the use, nor the relish of our existence, and consequently not one of those personalities, which are originally attached to us. Not so conferred, not a personality.

But though not one of those personalities which are originally attached to us, it may perhaps be connected with them; Though not Life, it may make us hold it more firmly; Though not Property, it may make us preserve it more surely; Though not Free-agency, it may make us relish it more highly. But it has not the least possible effect in this way. As to Life, a man may hold it as firmly, and securely, without power over other men, (providing they have no improper controul over him) as with it, and preserve his Property as surely and relish his Free-agency as highly, Free-agency being the privilege of directing our own actions, not regulating other men's. So that it has not the least possible effect in this way. It is not then in any wise connected with those personalities which are originally attached to our existence. But may be connected with them.

But though not one of our personalities, nor connected with our personalities, it may be originally fitting and RIGHT, that men should have it. Now this is impossible; for if it were originally fitting and RIGHT that men should have it, if original RIGHT did entitle to it, then it must necessarily be one of these personalities, i. e. things so conferred by GOD, or connected with them, GOD being the only source from which such an original title can flow. But setting aside this idea of original JUSTICE (GOD forgive us) for a moment, that GOD is the image of it,* which is the only one we can conceive or ever could conceive, as long But may be originally fitting and RIGHT that men should have it. This is impossible.

* See first note, Chap. III. Book I.

Not taking
the thing in a
kind of ab-
stract.

as HE is a sole moral Being governing the universe, and taking the thing in a kind of abstract, how is the idea of power (without a given cause,) originally just and right? How is it more fitting and right, that one man should govern another, than that another should govern him? How can we discover this in any source of fitness or rectitude? Might not all men pretend the same fitness? and then it would be a perpetual clashing of claims, a mutual annihilation of pretensions, which would extinguish the right in the very beginning?*

It appears, then, that power is neither a personality, nor connected with a personality, nor founded in original JUSTICE. And indeed they are all the same propositions, for it is only because a thing is a personality, i. e. conferred by God, or connected with it, that original JUSTICE does entitle to it.

Compared
with those
things which
are really
conferred by
GOD.

No simila-
rity.

Now let us compare power with those things which are really conferred by God, or are personalities, and see what resemblance it bears to them. Take it with Life, Property, and Free-agency, has it any similarity, any reference or relation to them? None in the world. It is very natural, that Life, Property and Free-agency should belong to a man, because they relate to him, to him himself, to no others, and are within his own person. But it is very unnatural that power should belong to

* But, say some men, power (the establishment of) is expedient, and expedience is the preservation of original rights (Life, Property, and Free-agency); therefore power is an original right. But there is a great difference here. There is a great difference between a "right given for preserving original rights," and an "original right in itself." The one is a right founded upon the preservation of the original rights of all, and which is to be regulated by the preservation of the original rights of all; the other is a right founded upon itself exclusively. The one is conditional, the other absolute. The one relative, the other positive. Supposing the expedience of establishing power, which has not yet been proved, but which is very likely to be the case, it would not make power one whit more original, it would only shew the call for erecting it. And if it did make it original, the certain consequence would be, that all would have it. And so they would, say you, because it would be for the general benefit. "Because?" the moment you mention "Because," you give up the question. This is the difference between power and original rights (how far it would be for the general benefit that all should have it, we shall see afterwards); there is no "Because" about them, they depend upon themselves, original JUSTICE entitles to them.

him, because that does not relate to him, but solely and exclusively to others, and is out of his person.

But let us appeal to our feelings on the subject. Does any man feel, that he has a right to power, as he has to Life, Property, and Free-agency? Does he feel that he is entitled to power, or would like to govern or be governed, as he likes to enjoy Life, Property and Free-agency, or would like to let another enjoy them? He does not. That answers the question.

Appealing to
our feelings.
Condemned.

Whether then, we consider power as a personality, i. e. a thing conferred by GOD, or connected with a personality, or founded in original RIGHT, which are all the same things, or resembling a personality, or appeal to our own feelings, it is equally destitute of any foundation in original RIGHT, equally free of any bottoming in original JUSTICE.*

Whether
then we con-
sider power
as a per-
sonality, &c.
equally de-
stitute of any
claim in ori-
ginal JUSTICE.

CHAP. IV.

THAT ORIGINAL JUSTICE DOES NOT ENTITLE TO INDEPENDENCE OF GOVERNMENT.

INDEPENDENCE of government is a new species of right. The others were positive, this is negative. The others were rights to have something. This is a right to be exempted from something.

Indepen-
dence of go-
vernment.

This is a right, if a government, or mass of power (to be explained afterwards) be erected in a country for preserving the rights of all, a right of living out of it. That it is so for preserving the rights of all, must be previously proved; i. e. it must be the fact, before this right can come into question. For if it be a government of tyranny, i. e. against the rights of all, to resist it is only contending for the rights

If a go-
vernment
be erected in
a country for
preserving
the rights
of all, the
right of liv-
ing out of it.

* It is very remarkable that from no one having a claim to power, or preferably, that is, all wanting it equally, it should have been concluded, that all had it equally.

How original
JUSTICE
entitle to it? of all. The question then is, what foundation there is for this title, in original JUSTICE.

Enquire if
GOD gave it. And here in trying whether this title be founded in original JUSTICE, we may resort to the same criterion, as with equality, and power, that is, to enquire whether GOD have given it, whether GOD have conferred it? For if God have given such a title, if GOD have conferred it, then it is inevitably right, and we may be very sure that it is founded in original JUSTICE, and if GOD have not given such a title then we may be very sure of the contrary.

How? Now how has God given such a title? How has he conferred on any one the "right of living out of government?"

But here it may perhaps be objected: "The onus probandi lies on you. It is not for us to shew the right of living out of government," but for you to prove the "right of submitting us to it." That we are just going to do; and we are to do it, by supposing government in the first place, and then seeing the consequences of not being submitted to it.

If gave such
a right, must
have given
it for and
against Life,
Property,
and Free-
agency, at
same time. If a government, or mass of power be erected in a country, it must be erected for preventing disorders and crimes. (We must anticipate so far, though we have not described government yet, for as we are talking of this right, we cannot discuss it without considering what it opposes.) Now if government be erected for this purpose, and we cannot conceive it otherwise, unless it be for the purposes of the devil, what is the right of standing out against it? What are its consequences?

It is the right of perpetuating crimes, for such would be its consequence. If the government be erected for "repressing crimes," what can the resisting it be, but "standing out for crimes?" "No," says some one, "We do not want that; when we commit crimes, put us to death, for we then place ourselves in a state of war.*"

At the best, then, this right sacrifices all comfort, and security for Life, Property, and Free-agency, and at the worst, these things di-

* See Locke.

rectly. What title, then, has GOD given to it in original JUSTICE?

To begin with the worst state, perpetuating crimes. If he have given such a title, he must have given it against Life, Property, and Free-agency, since their direct ruin would be the consequence. For what are crimes and disorders but destroying these? But GOD has given a right to Life, Property, and Free-agency, (see B. I. Ch. III.) Then he must have given a right for, and against these things at the same time.

But to take the best state, i. e. losing all comfort and security for them. Here they have provided a notable remedy, "If we attack your Lives, Properties, and Free-agencies we put ourselves into a state of war, kill us, and then your Lives, Properties and Free-agencies are safe." "That is not clear, we may not be able to kill you." Besides, we have as good a right to enjoy these things in security, as to enjoy them at all. If not GOD has given us a right to enjoy them, and not to enjoy them. He meant us to possess them as much as possible, and yet not to possess them as much as possible at the same time. This is as great an absurdity as the other.

Independence of government, then, is not a personality, i. e. thing conferred by GOD. The next point is, is it connected with a personality. Though not Life, does it make us possess it more fully? Though not Property, does it make us hold it more surely? Though not Free-agency, does it make us relish it more highly? Does it make us enjoy these personalities better? Does it contribute to the full possession, use, or relish of them?

This question is best answered by the preceding paragraphs. The next thing is, is it founded in original RIGHT? Now we have seen, that where a thing is not a personality, i. e. conferred by GOD, nor connected with it, it cannot be so founded, and for this very reason, that it is not a personality, i. e. thing conferred by GOD, nor connected with it, GOD being the only source from whom such a title can flow.* But, setting aside this, and attempting to conceive original RIGHT independent of the Deity, (GOD forgive us)

Independence of government, not a personality?
Is it connected with?

Ask the preceding paragraphs.

Founded in original RIGHT?
No.

Even in a kind of false abstract re-

* See this Book, last Chapter, p. 17.

verse of ap-
parent
equity.

as far as we can,* how can we think it just, or fit, that a man should stand out for what can be no good to himself, but on the contrary a real loss, (being want of protection) against the general benefit? How can we think it right that he should procure mischief to all, the probability or possibility, of crimes, (for that would be the consequence) without purchasing any real good or advantage, but in place of it a loss, to himself? This would be the very opposite of right, the very reverse of equity.

But if it could be supposed a benefit, or advantage to any man, that benefit or advantage must give way to the majority of benefits or advantages to others. How much more an useless, and empty, nay, mischievous title, when put into such a competition!

Returning to
real ground
would con-
tradict es-
sence of
RIGHT.

But, returning to the real ground, the strong stand they always take is on Free-agency. "Not to allow independence of govern-
ment, is to invade Free-agency." It does not invade Free-agency, unless Free-agency be the right of "committing crimes, or promoting their commission." Now this is impossible, for the same rule of RIGHT that gives me "my Free-agency, and all my real rights, gives the same rights to others;" so that to suppose this right against these rights, is to suppose "a right against itself, a thing to be round and square at the same instant."

And all
idea of.

But if real Free-agency were concerned, which cannot be supposed, for it is impossible that the enjoyment of my real rights can be diminished by that of others, even then, my Free-agency, my good Free-agency, must give way to the majority of the good Free-agencies of others. What then must become of this bad and mischievous, this contradictory to, and destroying, good, and therefore mischievous and bad, Free-agency? This would not be "Fiat justitia, ruat cœlum," but "Fiat injustitia, ruat injustitia major."

*See Chap. III. Book I. and this book all through, upon GOD; being the exemplification of RIGHT. It is a subject that we cannot be too often upon, or attempt humbly to investigate too fully. Though we, talking of a kind of abstract, may attempt to form an idea of what we may call RIGHT, independent of the Deity, yet when we conceive, or attempt to conceive GOD, we cannot separate the idea of RIGHT from him. Here reasoning stops.

The next point is, (pursuing the course we traced in our last chapter) does it resemble those real rights of Life, Property, and Free-agency, those essential things conferred by God, those actual and substantial possessions and personalities, which we talk of? In this way it has almost a worse chance than the other. What connection or resemblance can those things have with their opposite, what communion or intercourse, their holding, their use, or their relish, with what goes to annihilate them?

Does it re-
semble a per-
sonality?

The next, and last point, is, what do we feel upon the subject? Do we feel, that if a general compact be made for preserving the Lives, Properties, and Free-agencies of all, we have a right to stand out against it? A right "not to join in promoting what is for the general benefit, "what is made for preserving these things to all?" The best way of answering this question, is to ask, whether we feel a right to our own Lives, Properties, and Free-agencies? If we do, we cannot deny those things to others which we feel entitled to ourselves. We must then feel an irresistible duty imposed upon us to join in preserving them to all others in common with ourselves, for the same original rule of RIGHT that gives them to one gives them to another, it cannot be divided.

Do we feel
it?

But the unfortunate thing is, that men have always begun wrong. They have begun, by planting this right in the first place, and then insisted that it should never be taken from them, whatever the consequences, "Fiat Justitia," &c. &c. But this is reversing the mode of procedure. It is these very consequences, contemplated in their extent, that determine *whether it be a right or not*. Let me consider the consequences, and I'll tell you if it be a right. It is these consequences, as we see, that compel it to be NO right. Nor is it of any significance for them to say, "We do not want any thing against your government, "we only want you to let us alone." "No matter what you want, you "want something against our Lives, Properties, and Free-agencies, and "we cannot grant it you."

Men always
begun wrong
by planting
this right in
the first
place.

Whether, then, we consider independence of government, as a per-

Whether
then con-

sidered as a
personality,
&c. equally
destitute of
any claim in
original
JUSTICE.

sonality, i. e. a thing conferred by God, or connected with a personality, or founded in original RIGHT, (which are all the same things,) or resembling a personality, or appeal to our own feelings, it is equally destitute of any claim in original JUSTICE.

CHAP. V.

THAT EQUALITY, POWER, AND INDEPENDENCE OF GOVERNMENT ARE PRE-
TENDED RIGHTS, WITH ALL SYSTEMS FOUNDED UPON THEM.

Appears from
foregoing,
That equality,
&c. not
original
rights.

Not real.
Not plead-
able against
government.

This differ-
ence between
pretended
and real, real
being of an
origin supe-
rior to man.

But these
mere non-
entities.

IT appears from the foregoing,

1st, That equality, power, and independence of government, are not original rights.

2dly, That not being original they are not real.

3dly, That not being real, they can never be pled against govern-
ment, real being the only that can be so pled.

And herein consists the difference between these pretended and real rights, that the former can never be pled against government. Life, Property and Free-agency, being founded upon the PRINCIPLES of truth are very naturally superior, and can never be superseded in any shape.

“ Being of an origin, as we said, superior to man, they can never yield
“ to any thing that is of man.” But is that the case with these rights?

No. They are empty notions, mere non-entities in an original point of view, some of them incapable of being realized at all, and others only so far as men chuse to give them reality by their institutions.*

* Equality cannot be realized at all. If it were just, as we see it is not, how could it ever be accomplished? How could the acquisitions of men be levelled, or their care, or their abilities, or their industry? Or if it could subsist for one generation, how could it be ever transmitted to another? How could we answer for these qualities, either for acquiring or preserving, in posterity?

If we wish to see the difference between these, and real rights illustrated, we have only to look into history. If we traverse its whole scope we shall find, that the revolutions, and rebellions of the people (properly speaking of the world) have arisen from the invasion of natural privileges. It was they that excited commotion, they that always occasioned rebellions. We do not talk of the plots of revenge, or the designs of ambition, but the "clear discontents of the mass, breaking out into "open rebellion." These, we will venture to say, always proceeded from the above cause, always from the invasion of natural privileges.

Look into history, for difference between these rights.

What was it that drove the Tarquins from Rome? The rape of Lucretia. What was it that abolished the power of the Decemviri? The outrage of Appius Claudius. What was it that expelled the thirty from Athens? The cruelties of that thirty exercised over its citizens.* And so will it ever be found, so will it ever be seen, that it is the invasion of natural rights, the attack upon personal properties and inherencies (if we may use the word) that excites commotion. And how should it be otherwise? An invasion on any other subject, will never reach them. It will never reach them in such a way as warmly to interest, and thoroughly to rouse their feelings. They may be occasionally worked up, but they will never take the same cordial concern, the same genial interest. You may talk to them of power. Talk to them of their right to it in a country, where some portion has been assigned them by the government, declaim as much as you will,

What drove the Tarquins from Rome? &c.

Invasion on any other subject will never touch them.

Again as to Independence of government, how could that be substantiated? Are we to expect that men would be suffered to live in the heart of a country, unsubmitted to the laws of it? That other men would bear with being attacked, or being subject to be, in their Lives, their Properties, and their Free-agencies, merely to suit their will and pleasure? Even, if maintainable in Justice, this claim would be difficult enough to be supported in practice, what then are we to say of an empty notion? As to Power, that is a thing of entirely a different nature. It is established for the convenience of man, and therefore man will either give it existence, or not, as he finds convenient.

* These are only a few, from a number of instances. It can never be otherwise. The examples of William Tell, with many others in more modern times, are all to the same effect. And how can it but be so, for the reasons here given?

describe it as invaded, paint that invasion in the most glowing colours, you will never animate them properly. They will be actuated by your passions, not their own. You will be obliged to lead them, and when you cease leading them they will stop; when the winds fall, the waves will subside. In the other case, they will go on of themselves. The one is a furnace, which requires to be heated by artificial bellows, the other is a volcano, which bursts by natural fires. Every man feels that he has a right to Life, Property and Free-agency, but no man that he has a right to power, till he is told it by sophists, and false-reasoning politicians.

Thus both
reason
and experi-
ence in fa-
vour.

Thus then is the voice of reason and the testimony of experience, equally in our favour. And the latter is the sure guide, for reasoning, comparatively speaking, is a treacherous leader. Not that reasoning may not be true, but it is so difficult to make it so. In taking an extensive view of a subject, something may escape us, and if that something should escape us, it may derange our finest speculations. The best way, then, is to take in the aid of experience and where we can have that, our theories must be complete.*

Supposed by
some, that
these claims
enlarge
man's rights.
Enlarge, to
diminish.

It has been supposed, often,† that these rights of equality, power, and independence of government, add to the dignity of man, and it has therefore been the custom to extol them. It has been imagined, that they multiply the number of his rights, and enlarge the circle of his privileges. If they do so multiply them, they multiply in a most sinister manner. Under pretence of enlarging, they in fact diminish them. They destroy a system of certainty and truth, and introduce in its room a fabric of ambiguity and falsehood. Life, Property, and Free-agency never did any harm in the world. It was not those original rights, those sure land-marks of GOD'S JUSTICE (GOD forgive us if we go too far,) those natural PERSONALITIES which have GOD's seal set

* In experientiâ est omnis inductio vera. Bacon.

† See French Revolution.—Written in the year 1796.

upon them as it were, that have done the mischief. It was those false lights, those ignis fatuus' of philosophy, as we may call them, which by engaging in a treacherous pursuit have led us into the bogs of destruction and deception.

If we wish to contemplate this delusion for a moment, let us just cast our eyes upon these pretended rights, and see their effects upon the different PRINCIPLES of JUSTICE. Take equality for instance. JUSTICE gives every man his own, equality would take it from him. Equality would take it from him, because it would take from him the fruits of his industry. Power again, what would that do? Give every man a right to that, and you have *jus divinum** at once, with this difference, that it is in the multitude instead of a sovereign, for as to any mischief produced to mankind, it can be demonstrated, that there is at least as much occasioned by giving an unlimited right of this kind to the mass, when we reckon the various processes it undergoes (barring the temporariness of its nature,) as by placing it in an individual. Unless, indeed, we allude to the governments of Africa, if they can be so called, which as we observe in another part of this work, are not so much the elevation of the sovereign, as the depression of the human race. Lastly, take independence of government, establish that and you will turn mankind back into a savage state, and deprive him at once of all the benefits of civilization.

Can it be pretended after this, that these rights are really for the advantage of mankind? Can it be maintained, that they contribute in any degree, to his well-being, his prosperity, or his

See the effect of these rights, upon the PRINCIPLES of JUSTICE.

Offers the most direct violence to them.

* It may be necessary to inform posterity, that *jus divinum* was a supposed right of sovereigns, asserted two centuries ago, to make their subjects miserable, at least to do every thing they chose in defiance of laws, because it was said, they were GOD's vice-gerents. It was a veil of holiness thrown over their authority, which protected the exercise of it from examination. It is the superstition of the thing we allude to; and we make this reference, because though it was the subject of much contest at the time it may be now forgot. But it is hardly necessary to be thus particular. Though that specific exemplification may be no more, the idea will probably remain.

happiness? Does it not plainly appear, on the contrary, does it not prominently force itself on the understanding, does not JUSTICE cry out, as it were, with most miraculous organ that they are infamous quibbles raised upon the names of things, unreal mockeries and delusions, in direct contradiction to their essence, their purity and their existence? If equality be equal, it equalizes only to prescribe. If power elevate (the mass) it elevates only to depress them*, by introducing in succession all the various species of government† with their respective deformities and perversions. If independence of government add to the dignity of man, by enabling him to pursue his own will in contradistinction to the public happiness, it is the dignity of a wild beast, the pride of a savage.

Must therefore be an absolute period, and end of them.

Such then being these rights, that they cannot be made out on any original ground of equity, any fair principle of JUSTICE. That so far from being so made out, they are directly contradicted, and opposed by them. That instead of assisting the rights of man, they mutilate and destroy them. That under the appearance of enlarging his privileges, they take away his true ones, introducing in their room, such as can never be defined, or made forth-coming. In fine, that they are mischievous phantoms. Can more be needed to shew, that there is an absolute period and end of them? That these rights of equality, power, and independence of government, under whatever name affirmed, whatever denomination asserted, "are hurtful, and pernicious delusions, equally false, equally contradictory, and equally baneful with all systems that can be erected upon them."

* See whether the antient democracies did not produce tyrants.

† Ed., See Polybius.

BOOK III.

OF CIVIL RIGHTS.

CHAP. I.

OF THE EVILS TO WHICH MEN WERE EXPOSED IN A STATE OF NATURE.

IN what state men were originally or how long they remained in it cannot be very important to know. How long they were hunters, and fishers, how long shepherds, or how soon they became tillers of the ground, however it may gratify our curiosity to learn, cannot much increase the stock of our real knowledge, if by real knowledge be meant what bears upon the practical pursuits of men, and contributes to their advantage and happiness.

Whatever then men may have been in their first state, or however long they may have remained in it, sufficient for us is it to know that in that state they must have been some time or other. That is, in a state, when they were “detached from political connexion, and when none had any authority or rule over another. In a word, when they were in a state of nature.*” In such a state, it is easy to see the

* It has been the custom, sometimes, to object to this state, and to treat it as chimerical, or having never existed. Something may be said here. In the first place, there must have been this state, or something like it, unless we suppose that men were civilized all at once, and that government dropped upon them, ready instituted from the clouds. But in the next place, if there were not,

Strong
oppressed the
weak, &c.

Would seek
a remedy.

mischiefs to which they must have been exposed. That the strong must have oppressed the weak, the unjust injured, and the violent robbed and murdered. That all must have been a scene of disorder and of disorder most difficult to be borne. In such a state, it was natural for them to look round, and to seek a remedy for their calamities.

CHAP. II.

THAT GOVERNMENT, OR POWER, WAS THE REMEDY FOR THE EVILS, TO WHICH MEN WERE EXPOSED IN A STATE OF NATURE.

Would op-
pose force
by force.

Chuse a lead-
er.

AS violence was the cause of the evils which men suffered in a state of nature, they must have naturally sought a remedy for them, in the restraint of that violence. They must have naturally thought of restraining force by force, and joining their strength against the common invader. But as this strength would be often ineffectual, where all would be ready to rule, and none to be commanded, they would chuse a leader who should guide their force, and conduct it properly against the common enemy. But as it would be troublesome always

what then? Truth is not things, as we have endeavoured to shew, see Book II. Ch. II. but "the rational relation and possible exemplification of things when the fact happens." The PRINCIPLES of truth must have existed (ready for application) whether this state existed or not. As Montesquien says, "The rays of the circle would have been equal though the circle had never been traced." This is a grand passage. "Les etres particuliers intelligens peuvent avoir des LOIX qu'ils ont faits; mais ils EN ont aussi qu'ils n'ont pas faites. Avant qu'il y EUT des etres intelligens, ils etoient POSSIBLES; ils avoient donc des RAPPORTS POSSIBLES, et, par consequent des LOIX POSSIBLES. Avant qu'il y eût des LOIX FAITES, il y avoit des RAPPORTS DE JUSTICE POSSIBLES. Dire qu'il n'y a rien de JUSTE ni d' INJUSTE que ce qu'ordonnent ou défendent les LOIX POSITIVES c'est dire qu'avant qu'on eût tracé le CERCLE, tous les rayons N'ETOIENT PAS EGAUX!!! See Montesq. Esprit des Loix, Tom. I. ch. 1. p. 3, Ed. Genev.

to punish crimes, and better far to prevent their commission, they would as naturally again think of rules which should forbid certain actions, and annex penalties to their perpetration. Further, as these rules might be misapplied, and the innocent confounded with the guilty, they would appoint those who should judge on them. Here then would be rules, (or laws) made, rules judged, on, and rules executed. This would be government.

Make rules
and Appoint
judges.
This govern-
ment.

CHAP. III.

THAT THE END OF GOVERNMENT OR POWER IS TO PRESERVE CIVIL RIGHTS.

WE have seen that government is the remedy for the evils to which men are exposed in a state of nature. And what are these evils? Having their Lives, Properties, and Free-agencies attacked. But these are Civil Rights, for when Civil Rights are spoken of, we find, that no other are understood in society. When a government is praised for preserving Civil Rights, it is meant that it protects men's Lives, Properties, and Free-agencies. The end of government then is to preserve Civil Rights.

End of go-
vernment, to
preserve Civil
rights.

CHAP. IV.

THAT CIVIL RIGHTS ARE ONLY REAL, OR NATURAL ONES IN ANOTHER SHAPE.

THIS is a consequence of the foregoing.

Consequence
of the fore-
going.

CHAP. V.

THAT THE END OF GOVERNMENT OR POWER IS TO PRESERVE CIVIL OR REAL OR NATURAL RIGHTS, AND THAT THE WHOLE IS A BUSINESS OF PRACTICAL UTILITY.

Great conclusion from all this that the end of government to preserve Civil or real or natural rights, and that the whole is a business of practical utility.

THE great conclusion from all this is, that the true end of government is to preserve Civil or real or natural rights, and that the whole is a business of practical utility. For as Civil or real or natural Rights, or public happiness, or that utility, has been proved positively to be the end of it upon one hand, so has it been shewn negatively, on the other that there is no abstract right, or claim to power, to plead over this.

BOOK IV.

OF POLITICAL RIGHTS.

CHAP. I.

OF THE DIFFERENCE BETWEEN CIVIL AND POLITICAL RIGHTS.

CIVIL rights relate to natural privileges*, Political to power†.— Civil rights relating to natural privileges, Political to power. Civil rights concern the titles of Life, Property, and Free-agency; Political, the share that a man has in the government of the country. And that the above is a true distinction, we may see from this, that when we praise a government for preserving Civil rights, we mean, that it protects Life, Property, and Free-agency; when we commend it for preserving Political, we mean, that it gives a man all the share in the government of the country, that is conducive to public happiness.

And from this results a further distinction, that Civil rights are of a private, Political, of a public nature. It is plain that the rights of Life, Property, and Free-agency, being for the benefit of the individual himself, must relate to him, and to him only. But Political, Civil rights of a private, Political of a public nature.

* From *civis*, a citizen; these, viz. Life, Property, and Free-agency, being the objects for which a man becomes a citizen.

† From *πολιτης*, a member of a state, which is the power for preserving the above.

being rights to power, and power being instituted for the benefit of the community, must relate to the public entirely.*

Civil rights then relate to Life, Property, and Free-agency, Political, to power, and authority. Civil rights are of a private, Political, of a public nature.

CHAP. II.

THAT THE FIRST GREAT POLITICAL RIGHT IS TO ESTABLISH POWER.

First great
Political
right to estab-
lish power.

AND if Political rights be rights to power, then the first great Political right must be to establish power. Surely that right to a thing must be primary, which is the right to create and originate it.

CHAP. III.

THAT ALL POLITICAL RIGHTS, OR RIGHTS TO POWER, ARE FOUNDED IN THE PRESERVATION OF CIVIL PRIVILEGES.†

All Political
right found-
ed in the
preservation
of Civil
privileges.

THAT all Political rights are founded in the preservation of Civil privileges is a PRINCIPLE of the utmost consequence. If the truth

* It may be said here, that both are equally public, and private. Are not political, equally, private, as giving the citizen his Life, Property, and Free-agency? Are not Civil equally public, as being these things preserved to all, and for the benefit of all? But the difference lies here. The one is private, the other public in *its origin*. Life, Property and Free-agency are private where possessed first, that is, by the individual, and for the benefit of the individual. Political are public, where possessed first, that is, not by the individual, but from the public, not for the individual, but for the community entirely.

† “We are therefore to look upon all the vast apparatus of our government, as having ultimately no other object or purpose, but the distribution of JUSTICE, or, in other words, the support of the twelve judges.” See Hume’s Essays, Vol. I. p. 35. oct. ed.

of this had been rightly understood, much of the error and unhappiness that have taken place in the world would have been saved, as men would have avoided these pretended rights, which by holding forth a visionary power, have defeated what is really salutary to mankind. * They would have placed government upon its true basis, and have shewn, that "as utility is its end, so out of this utility must spring all right, and title to it."

And that all right and title to government, or power, or Political right, does spring out of utility, or Civil rights, must plainly appear to whoever contemplates the subject. For, in the first place, if we go up to the essence of the right, the source of the title, upon which government, or the mass of power which we call government, is founded, we shall find it to be Civil rights. Upon what ground could any man, or set of men, or multitude of men, have controuled man's natural, that is, savage free-agency, (for as to any proper, he has, or ought to have it, more in government, than out of it,) upon what ground could he or they have done so, but the necessary preservation of Civil rights, since no man naturally, or by original JUSTICE, has any right to govern another. † Upon what ground could he have done it, but the right that men had, that they, that is, these Civil rights, established by GOD, should be preserved? Upon the right that they had, that a power should be raised in a country, to restrain crimes, in opposition to the pretensions of any one to wanton independence of action? ‡ If then they went upon this right, to build government or power, and could go upon no other, government or power must stop, where this right or occasion for its exercise ends, and of course all right and title to it.

Thus, then, in the first place, there can be no title, no pure title to government, or power, drawn from the source of its right and essence, Same thing appears from extent of causes.

* See French Revolution.

† See Book II. Ch. III.

‡ See Book II. Ch. IV.

independent of Civil privileges. But the same thing will appear in a different way from **the** extent of causes. Can any cause extend beyond itself in the effects which it produces? This is against every idea of causation, and would make a thing no cause at all. Now Civil privileges are the cause of government or power. They produced government or power. How then can they produce more of it, than is caused by them, that is, than is for their preservation? Yet this would be the case, if there were any right to government, or power, independent of them. There can then be no such right.

Now this proof is complete. If **CIVIL PRIVILEGES** be the whole **END** and **PURPOSE** of government, the **WHOLE OBJECT** in view from it, as we hope they have been fully proved to be,* **THEN** they are the whole **MOTIVE** for making it, the **WHOLE CAUSE** for erecting it; and, since they cannot extend beyond themselves, can produce **NO MORE** of it, than is for **THEIR PRESERVATION**.

If Political right not arising from Civil privileges, must come out of a right to power.

But if a right to government or power, do not arise from Civil privileges, it must necessarily from a right to power, as power in itself. There is no other. The system which we call government, taking in the whole of its fabric, both the governing part and the protected, is but composed of Civil and Political, of Civil, which regards the citizen, and Political, which concerns power and authority. This is the *totum* of it. This exhausts it†. If this right then to government, or power, taken as its Political or governing part do not arise from Civil privileges, it must from a right to power, and authority. Now we have shewn clearly, we hope, that there is no right to power, as power,

None such.

* See Book III. Ch. III. IV. and V.

† If religious rights, or the right of worshipping the **DEITY**, as we chuse, and of holding what opinions respecting **HIM** we think fit, (as long as we do not disturb society) be mentioned, as they surely ought, we answer, that they are comprehended under Civil rights, or rights of the citizen, coming in as freedom of thought under Free-agency.

properly and peculiarly in itself. We have demonstrated that plainly.* We have shewn that there is no title in any man, to govern another, on any ground of original JUSTICE. That "power, therefore, can never be an original right, that political titles never can be." In short, that there is no right whatever to power, properly so called, and, consequently, that the right of government, or power, must either come out of Civil privileges or nothing.

And for this very reason of there being no such thing as a right to power, properly and strictly in itself, there cannot be properly and strictly speaking any Political rights in government. They should be called Politico-Civil, since it is to the preservation of Civil privileges, and TO THESE ALONE, that they owe their existence.

This being the case then, it obviously appears, that all those rights commonly and correctly enough, called Political, must arise out of Civil. That it is in this source, in this fountain alone, that they can, or do, take their origin; that as the right of government or power, is "the right which mankind hold to have their Lives, Properties, and Free-agencies preserved," there can be no right to government or power independent of them.

But if it were otherwise, if the right of government or power were not constituted, and built, as we see it is, "UPON THE BASIS OF CIVIL PRIVILEGES," still these are so precious, and valuable to mankind, that the right of government OUGHT to come out of them, that is, though there were no original title to them from reason and JUSTICE, or (if it were not irreverent to state it, or impossible to believe it) from the SUPREME BEING, as the fountain of reason and JUSTICE†, still these things are so much for the good of mankind, so profitable, so advantageous and expedient in themselves, that the after and subsequent title to government or power, ought to be made

* See Book II. Ch. III.

† See Book II. Ch. III. p. 17.

to stand upon, attach to, and come out of, them. Take Life, Property, and Free-agency. Take them in all their relations, as afterwards developed in government. The security that a man has for his Life, the comfort and happiness derived from it, the certainty of acquiring Property, the safety of holding, the prospect of succeeding to, of conveying to whom he will, of receiving from those who acquired it, and this through all the multiplied situations that can take place in a civilized, a commercial, and a happy and populous country, and the more, the more so. Add to this, the comfort of doing what he pleases, of not being interrupted in the performance of any lawful, any naturally, and originally, legitimate action; of disposing of his being as he lists, without being accountable to any one. When we count these things, when we calculate these advantages, multiplied, and modified, and diffused, and developed, and extended as above, we must acknowledge that without going up to the essence of the right, without ascending to the first laws of reason and JUSTICE, we should constitute the right of government upon these privileges, and upon these privileges only.

Whole blessings of man in this world.

For it must be confessed that Life, Property, and Free-agency, are not only the paramount blessings, which man can enjoy in this world, but in fact all of them. For they either are themselves those blessings direct, or include the after use, relish, or enjoyment of them. Whether a man devote himself to the pursuits of science, the occupations of business, or the amusements of pleasure, lawful pleasure, still these things are comprehended in the circuit of the privileges we talk of. Nay, even the gratifications of vanity and ambition proceed from them, that is, cannot be attained without them. In a word, whatever relates to the use or enjoyment of our existence in any shape, whether good, bad, or indifferent, whatever concerns our being, whether well or ill, is included and implied in them.

Right of go- Thus then it appears, that, take it which way we will, whether we refer to the

PRINCIPLES of **JUSTICE**, or to what is advantageous and profitable for mankind, power, or government, and the right of power or government **IS**, and **OUGHT TO BE**, constituted upon these privileges. But this has not always been the way in which men have begun. They have sometimes set out with planting Political rights, (or rights to power) in the first place, and then insisted on never deviating from them. They have given every man a personal right to a share of power in the first instance, and then required that it should not be taken from him.* Perhaps they thought, that this right as afterwards evinced in government, was for the benefit of Civil privileges, for we defy any one to deny, that they are the principal. Perhaps they thought so. How far it would be for such benefit, will be seen afterwards. But still they were equally wrong. They should have begun by shewing that it actually was so advantageous and profitable for these privileges, and not asserted it in the first place.

But however those persons may have founded their argument, or whatever methods they may have taken to support it, still the case is the same, with respect to these or **CIVIL PRIVILEGES**. They are, in every way we take them, the **CRITERION** and **STANDARD** of **POWER**, or **GOVERNMENT**. "Power or government **HAS** arisen from them, power or government **OUGHT** to have arisen from them, and power or government **NEVER CAN** do any thing but arise from them." In these then are we to look for every foundation of power or government, for every thing relating to it. In them is placed every right, title and possible pretension to it. In short, to conclude almost in the words we begun, in the due preservation of **CIVIL PRIVILEGES** is to be found all right to power ; in the proper protection of **CIVIL RIGHTS**, all title to government.

* As they have done by a right to independence of government. See Book II. Ch. IV.

CHAP. IV.

THAT A NATION HAS A RIGHT TO ESTABLISH POWER.

Power or go-
vernment
necessary for
preserving
Civil privi-
leges.

Must then
be a right in
man to esta-
blish it.

How to be
exercised?

By countries
and nations.

IT is obvious from what was stated in our third Book, that the establishment of power or government is necessary for preserving Civil or real or natural privileges*. Let us only reflect upon the crimes, (as here stated,) which would lay waste society, if there were no power to controul them. This power then must either drop ready instituted from the clouds, or there must be a right in man to establish it, founded on the preservation of these privileges, as we saw in our last chapter, unless we suppose that GOD has given him a title to these things, Life, Property, and Free-agency, but denied him the means of preserving them, that HE meant that he should possess them, and should not possess them, should hold them, and should not hold them, at the same time, the very idea of which is absurdly blasphemous. We must then conclude that man has this right.

And how is he to exercise this right? Can all mankind do it together, divided, as they are, by seas, mountains, rivers, &c. &c.? Or if they could be collected, which they cannot, could they ever agree in their notions, so as to form any thing like one uniform system of government? They could not. The very idea is ridiculous. We must then take them as we find them, distributed by Providence, that is by countries or nations†.

Taking them then by Countries or Nations, a Country or Nation must infallibly have a right to establish power, it having now been

* See Chap. I. II.

† “ And hath (GOD) made of one blood all nations of men for to dwell on all the face of the earth, and hath DETERMINED the times before appointed, and the BOUNDS of their habitation.” Acts of the Apostles, ch. xvii. ver. 26.

Καὶ ἐδόθη αὐτοῖς ἐξουσία ἐπὶ πάσαν ΦΥΑΗΝ, καὶ ΛΑΟΝ, καὶ ΓΛΩΣΣΑΝ, καὶ ἔΘΝΟΣ, Ἀποκλ. xiii. 7.

clearly proved that mankind have the right, and that there is no way of exercising it but by Countries and Nations.

CHAP. V.

THAT A NATION HAS A RIGHT TO ABOLISH POWER.

AND this right, we think, is pretty obvious, upon the same grounds as the former. If a nation have a right to establish power, for the preservation of Civil rights, it has undoubtedly to abolish it for the same purpose, that is, when this power "goes contrary to, or destroys the end for which it was established." All disputes then, upon the point, whether a Nation have a right to alter their government when prejudicial to Civil rights, are absurd.—First, because they have this right upon the government itself, which is, or ought to be, constituted upon these rights, and then, upon the PRINCIPLES of JUSTICE, if a government had never existed.

This right obvious on the same ground as the former.

CHAP. VI.

OF THE DIFFERENCE BETWEEN A RIGHT TO ESTABLISH POWER, AND A RIGHT TO POSSESS POWER.

THAT a nation should have a right to establish power, may seem in some measure at variance with our former PRINCIPLES, as we contended so strenuously in our second book, that there neither was, nor could be, any right to power.* But this ap-

Right to establish power, not at variance with the denial of the right to possess it.

* See Book II. Ch. III.

parent discordance will soon vanish, when we consider the subject more closely, and especially, when we examine the difference between a right to establish power, and a right to possess it.

Constituted
upon it.

It will be found that the grounds, upon which the former of these Rights, is constituted, by no means interfere with the PRINCIPLES, which exclude the latter, nay, that they confirm them. For what were these PRINCIPLES? That power not being an original privilege, but only a means,† there could be no right to possess it (absolutely). And what do we say now? That being a means, there must be a right to establish it, and that upon the very ground, that it is a means, and that there can be no right to possess it.*

Right to pos-
sess power,
primary to
establish it,
secondary.

But the difference between these two rights, will be much better seen, by a more close comparison of them—And, in the first place, a right to possess power, would be primary, a right to establish it, is only secondary—A right to possess it, would be primary, because it would be a right to possess it on account of itself—Would it not be on account of itself? On account of what other thing, would it be? If it be a right to possess it (absolutely) it must be a right to possess it under all circumstances, since there is no right to possess a thing absolutely, which is not to possess it under all circumstances. If it be only a right to possess it under certain circumstances, it is “sometimes a right to possess it, and sometimes not a right to possess it.” If we would know the difference between these things, we have only to look to Life, Property, and Free-agency, which are full possessions. Have not men a right to possess them, under all circumstances? Is there any

† See Book II. Ch. III.

* The same reasons that secure it as a *means*, exclude it as an *end*—Why have men a right to establish? Because it is a means, a means for Life, Property, and Free-agency, which they have an irrefragable right to.—And why have not men a right to possess it? —Because it is only a means for preserving this very Life, Property, and Free-agency, and to be regulated by them.—If tyrants could plead their right to possess it, there would be no establishing, or re-establishing for the sake of Civil privileges.

time when they have not a right to possess them? As to forfeiting them by crimes, that is another thing—That is no invalidation of the right, that is only securing it to other men.—It is no addition to my right of Life, that I take away another's.† A right to possess power, then, would be a right to possess it, under all circumstances, and being a right to possess it, under all circumstances, it would be on account of itself, and being on account of itself, it would be primary.

Now is this the case with a right to establish power? Is that primary? Is that on account of itself, or “on account of Life, Property, and Free-agency, which it is meant to preserve?” Ask any philosopher, or politician, ask any one—Ask them, if it was not erected to preserve men from the attaint of crimes, and to enable them to live comfortably and happily in society. They will all agree in this—A right to establish power, then, is not on account of itself, it is not primary.

Here then, is one great, and essential difference between these rights, that a right to possess power, would be primary, a right to establish it is secondary,—Another difference is, that a right to establish it, is occasional, a right to possess it, (absolutely always, let it be remembered) would be constant. If there were, as there is, only a right to establish power, should a man come after a government was erected, and claim his share in instituting, he might, as he may be, told, “You are come too late, the government, or frame of power, which is to protect CIVIL PRIVILEGES, THE FOUNDATION OF ALL,* and which does protect them, is established, you must not disturb the public tranquillity, &c. &c.” But suppose a right to possess power, and he might answer, as he certainly cannot answer, “I don't care for that, your Civil privileges, are nothing to me, give me my share of power,

† See Book I. Ch. III. p. 9.

* See this Book, Third Chapter.

“ I don't like your government, you cannot deprive me of my birth-right.”

Such would the language be, and so would the right be independent—It would be independent, as much as Life, Property, and Free-agency, and “ constantly, like them, reclaimable, as the gift of PROVIDENCE.” Is there any time, when men could be told, “ This is not a time for your Lives, Properties and Free-agencies, you are to be murdered, robbed, and oppressed ?”

Right to
possess pow-
er, original,
to esta-
blish it,
subsequent.

A third difference between these rights is, that a right to possess power would be original, a right, to establish it, is subsequent—A right to possess power, would be original, because, being on account of itself, which it would then be, as has been proved, it would be from the beginning. Are not the privileges of Life, Property, and Free-agency, which are on account of themselves, from the beginning ? It is nothing to say, that they are on account of man's happiness, they are man's happiness, or if not, the same would apply to man's happiness, it would be on account of itself, and then from the beginning. Must not every thing, rationally speaking, that is on account of itself, that is its own means, and end, its cause and consequence, be from the beginning ?*—What other thing ought to precede it in reason, since it is for the sake of nothing else ? Now a right to possess power, would be on account of itself ; it would be for the sake of nothing else—It would then be from the beginning, it would be original.

Now is this the case with a right to establish power ? Is that original ? No—“ Life, Property, and Free-agency existed first, and then this right to protect them.”

Right to
possess pow-

A fourth difference between these rights, is, that a right to possess

* If a thing be its own means, and end, it must be, from the beginning—What is to precede, there is no means to it ? If it be from the beginning, again, it must be its own means and end, for if any other thing was a means to it, it would not be from the beginning.

power, would be absolute, a right to establish it, is conditional.—A right to establish it, is conditional, because being for the preservation of Civil privileges, it must be regulated by these privileges, and can never recal it, nor establish anew, till they are violated.—But would this be the case with a right to possess power? Would that be conditional? No, it would be most absolute, it would exist like the privileges of Life, Property, and Free-agency, which, as we said, can never be precluded.

A fifth, and last difference between these rights, is, that a right to possess power, would be individual, a right to establish it, is collective.—A right to possess it, would be individual, because it would be held by individuals, and for individual purposes solely, like Life, Property, and Free-agency.—A right to establish it is collective, because it is held by the public, and for public purposes entirely.

Here, then, are five cardinal, and essential differences between these rights, that the one is primary, the other secondary, the one original, the other subsequent, the one constant, the other occasional, the one absolute, the other conditional, the one individual, the other collective. Need more be shewn to prove all the radical causes of difference among men, all the possible sources of distinction, and discrimination?

And it is from these causes, radical, and essential as they are, that have arisen all the great disputes among politicians—If one set of men maintained at one time, that let a nation be ever so miserable, they had no right to change their government, from what could this proceed, but denying a right to establish power as a MEANS, since they overlooked the ENDS, for which it was established? And if another set of men upheld at another time, that let a nation be ever so happy, they had a right to depose their rulers, what could this arise from, but asserting a right to possess power as an END, (since they took it not as a means connected with Civil PRIVILEGES), but an independent, and absolute

possession in itself? If men meant only by asserting a sovereign right in the nation, that power was made for their happiness, that is, "for the protection of Civil privileges," and that when it was abused it ought to be recalled, then it was very intelligible and only amounted to a denial of the doctrines of passive obedience and non-resistance, or in other words, blind, and unlimited submission to government—But if they meant, on the other hand, that let a nation be ever so happy, ever so much in possession of their Civil privileges, they might with any reason, or no reason, on any pretence, and any pretext, at all times, and in all circumstances, overturn a government, merely because power was their property, then it was a right to possess power, and as wicked, and damnable a doctrine, (humanly speaking) as ever was propagated—This was taking the nation as composed of individuals, with every one of them as complete a right to power, as to Life, Property, and Free-agency, the very notion we have been reprobating.—But those again were as wrong on the other hand, who maintained, that when once a government was erected, it was by that very circumstance rendered permanent, as if it could consecrate itself. That the very point of its being government, made it intangible, however fatal to Civil privileges, that there was no enquiring into it, a doctrine which would justify the government of Turkey—Is there any government, that it would not defend? If then men thought in this way, (unless indeed they gave into divine right, *jus divinum** and did not think at all) from what could it arise, but missing the ends of government, and overlooking the distinction between establishing and possessing power? If they had observed that, they would have been able to have placed government upon it's proper basis, without running into the excesses of extravagance—They would have secured all the purposes of freedom, without exposing themselves to

If had observed these distinctions, would have placed government on its true basis.

* Upon this and passive obedience, and non-resistance above, see note, p. 27.

the consequences of anarchy—In short, they would have done every thing, that was necessary for the happiness of mankind, without incurring any of the evils of licentiousness†—Since such then, is the importance of this distinction, let us rigidly adhere to it—Let us never lose sight of it—Let us constantly keep our eyes upon the broad distinction between a right to ESTABLISH power, and a right to POSSESS power, since it is upon this difference, that is to be built, every sober idea of regular government, every rational notion of free establishment.

Upon distinction between a right to establish and to possess power, to be built every rational notion of sound government, every proper idea of free establishment.

CHAP. VII.

THAT AT THE MOMENT OF ESTABLISHING POWER, OR GOVERNMENT, NONE CAN BE EXCLUDED.

THAT CIVIL PRIVILEGES are the FOUNTAIN of POLITICAL, is a maxim, which cannot be disputed.* From this axiom, there is no departing, there is no deviating in any shape—We must then ever look upon Civil rights as the criterion of political, the grand rule, and test by which we are to try them.

Civil privileges test of political.

And if this rule shall be, as we trust, it will undoubtedly be found to be, of service to us upon many occasions, so will it especially upon the present—For the only question we shall have to ask here, is, how far this right, if it be a right, of non-exclusion at the moment of forming governments, be necessary for preserving Civil rights?

Only question if non-exclusion necessary for them?

And here we have to observe, that there are only two kinds of governments, existing, or that can exist, in the world, and these are an

Only two kinds of governments in the world, an open, and a close.

† See again French Revolution.

* See Chapter III. of this Book.

open, and a close one.—“An open, which has in view the interests of all, and protects the interests of all, that is, the Civil privileges of all, equally”—And “a close, which has in view the interests of some, and protects the interests of some, that is, more than the Civil privileges of some, particularly.”

Way to have
an open,
persons
influenced
by a general
spirit,
to have
a close, per-
sons in-
fluenced
by a parti-
cular.

And the way to have an open government, is, to “have the persons who constitute it, influenced by a general spirit, that they may make it for the general benefit, and the way to have a close one, is to have the persons who constitute it, influenced by a particular spirit, that they may constitute it accordingly.”

For it will always be found, that “exactly as you ante constitute the persons who are to frame your government, so will your government be formed”—A complete proof of this appeared in the antient states, where all those, which were constituted by Heroes or Demigods, is they were called, were tyrannical,† and all those which were made by free countries, or colonies, sent from free countries, were free, that is, open, or something like it.‡ And this very naturally—For the constant consequence of some citizens being considered more than others at the moment of forming governments, is, that favourable distinctions will be heaped upon them, and burthens laid upon the rest.

Question,
open or
close bet-
ter for
Civil rights?

The only question then, is, which of the two governments, an open or a close, be the better for Civil privileges, and here we think, there cannot be much difficulty—That undoubtedly of a general nature—That, which is made for protecting the interests of all, that is, the Civil privileges of all, equally, must unquestionably be better for the Civil privileges of all, than that which is made for protecting the interests of some, that is, more than the Civil privileges of some, particularly.

Open.

How to get
it?

The sole point, then, is, how to get at this government? How to

+ See Athens as founded by Theseus, Thebes as founded by Cadmus, &c. &c. &c.

‡ None were either completely open, or completely close, as we shall see after, but we talk of their tendency.

attain this system, which is better for the Civil rights of all? The answer is, "by ante-constituting the persons generally who are to frame it, and not excluding any one from his voice, or suffrage." By not excluding any at forming.

For this is the only way in which you can constitute a Government of that sort, which is necessary for preserving your Civil privileges. Only way. The moment you exclude any one, you give it a close cast, you make it a particular interest, and the more you exclude, the closer.

Not that it is necessary, nor do we at all mean, "that you are to poll every man at forming a Government, or that the Government is illegitimate or spurious, if not so formed." We mean no such thing—We mean only, that you cannot exclude any one of positive authority, at such a time—That if any man offer his vote, you are bound to accept it—That the PRINCIPLE of exclusion, if once admitted "as fixing down the right of forming with particular persons," would go any length, even that of attaching the closest government—What is to hinder it? If once you exclude, may you not go on from exclusion, to exclusion, till you bring it to a Despotism? What rule would exclude one, that would not exclude twenty, or a thousand, or a million, or any number, if so needed? If twenty tell the multitude, that they are wiser, or worthier, or any thing else than they, may not one tell twenty the same thing, and then it comes to a Despotism? Not necessary to poll. Exclusion go to a despotism.

But it may be said, perhaps, that if you were not to exclude any at the moment of forming Governments, the thing would end, in a broad Democracy, and that would be as bad for Civil rights, as the closest Government—And here might be enumerated all the anarchies, oppressions, and tumults which take place in Republics, and which so frequently extinguish for the moment all freedom—But it ought to be remembered, that it is but for the moment. These evils are only temporary, for let Republics be as bad as they will, as tumultuous under a mob, or as tyrannical under a demagogue, (till lost by corruption, and

Said would end in a broad Democracy, if you did not exclude. Evils of a Democracy temporary.

that is not more a consequence of Republics, than Monarchies) there is always an energy in them, which enables them to recover themselves—There is a general sense that government is made for all, and if the nation are not free, they feel at least, that they ought to be so. Is there nothing in this? Is there any comparison between this state, and that of men's minds, where they think their oppression matter of course, and that it calls for no exertion to emancipate themselves? Almost all depends upon this, for which reason, it was very well said at one time, that Rome was incapable of freedom.

Not so heavy
as those of a
Despotism.

Neither are the evils of a Democracy, setting aside the temporariness of their nature, so heavy, and oppressive in themselves, as those of a Despotism—We shall take them even with universal suffrage, and that in these Governments, this is as bad a thing as possible, will be readily granted us—Well then, taking them with that, what will be the consequence? Why, at the worst, (we suppose it for the sake of the full argument) confusions without end, seditions, expulsions, a succession of demagogues, some of them tyrannical ones too, for such we have certainly seen Republics in their worst tendencies.† But is this as bad as the situation of things in Africa, where all believe themselves instruments, absolute tools, and play-things in one man's hand, for his mere sport and pleasure? Is the state of Democracy equal to this, either in misery or degradation, for this last too is something? Nobody can say it, nobody can think it—Nobody can compare two states, in the one of which at least, men are treated as human creatures, and not as brutes, and savages.*

Said would
not be a
Despotism.

But it will be said, perhaps, that it would not be a Despotism, if you introduced the rule of exclusion, at forming—What would it be then? An Aristocracy, or an Oligarchy? Not to mention that it is not clear how far these Governments are preferable

† See France under Robespierre.

* See histories of Africa, and page 27, where these very Governments are pointed out as the worst of all, not being so much the elevation of the sovereign, as the depression of the human race.

to Democracies, for if they are quieter on the one hand, they are more constantly oppressive on the other, as witness the State of Venice,* how are you sure that the few would stop at that? How do you know that they would not go on to a Despotism? Might we not as well say, that the multitude with no exclusion at all, would stop at a good general government, and then you would have both order, and liberty? Might not we as well say would not be a Democracy?

The only fair way of reasoning then, is to take PRINCIPLES in their extremes, and taking them in their extremes, we say that Democracy, the broadest you can suppose, is preferable to Despotism—For if once you exclude a single person at the moment of forming Governments (at the moment of forming, be it remembered we speak) there is no stopping afterwards, you must go the full length of the PRINCIPLE—That men will not do a thing, is no way of reasoning, when we are talking of PRINCIPLES—It is not what they will do, but what they can do, that forms the whole of the consideration—There, “what may be, must be,” if we mean to speak with any certainty—But we can take it either way—If you say that they are to stop, we say that a good general Government is better than an Aristocracy, or Oligarchy—If you chuse them to go on, we say, that a Democracy, the widest you can suppose, is preferable to a Despotism. Only fair way to take PRINCIPLES in their extremes. Can take it both ways.

But there is indeed little chance, taking the world as it is, that at the moment of forming Governments, the multitude (even with no exclusion) will proceed to any very dangerous extremity—Though it is a consequence of a general spirit prevailing at such a time, that there will be a general Government, yet it is by no means so, that that spirit being broadly extended, will produce the widest possible institution. There the reasoning stops. At such a moment, men are apt to be led by the wise, and prudent, and if you examine history you will find, that Little chance that the multitude go to the widest institution.

* Written in the year 1798, then the oldest in the world.

it is not, when a Lycurgus, or Solon are constituting, (as far as they did constitute*) that the multitude are troublesome, but when a Cleon, or Alcibiades are agitating—It is afterwards in the confusion and conflict of parties—And this very naturally, for the multitude never consider themselves as interested in any thing but Civil rights, till led on by others,† and if aught, are too easy about power, as legitimately bearing upon the purposes of Government—Now take the other side of the question. If once you begin to contract, it is not quite so clear, that some one, or other will not chuse to be a tyrant.

Not so clear that some one will not chuse to be a tyrant.

With surmises nothing to do.

But with this we have nothing to do—It is not with probabilities, and surmises, that we converse, but with “strict conclusions drawn from accurate PRINCIPLES”—Taking then these as our ground, we say, that CIVIL PRIVILEGES are the criterion of every thing—That they are the STANDARD of every thing—That they must determine every thing—Beginning then from these, we find, that no exclusion at such a moment is compatible with Civil privileges, for any exclusion would totally destroy them.

Exclusion would destroy Civil rights.

How then talk of it.

We think then, that there can be no doubt upon the subject now—We think, that there can be no question, or difficulty further. You acknowledge Civil privileges, as all must do, to be the great rule, the grand test, the determining standard and criterion of every thing—Acknowledging them then as such, how can you talk of exclusion, at the moment of forming Governments—Exclusion at such a moment, would destroy Civil rights, for exclusion would introduce a close Government.

Would introduce a close government.

* See Lycurgus, Solon, and others.

† See Book II. Last Chapter.

CHAP. VIII.

THAT AT THE MOMENT OF FORMING GOVERNMENTS, ALL QUESTIONS MUST
BE DETERMINED BY A MAJORITY.

THIS is a consequence of the last chapter—For we agreed to exclude none—What then does it signify, whether we exclude them nominally, or really, whether by giving no voice at all, or a superiority, or superexcellence of voices, to the same person? All then must be equal (at the moment of forming be it remembered we speak) and if all be equal, what superiority can we have but a majority, what predominance, but that of numbers, where all are of equal value?

Consequence
of the last
chapter.

And that all must be of equal value, at such a moment, would appear from other circumstances, even if it did not from the last chapter, that is, from it's being necessary for preserving Civil rights—For at the moment of forming Governments, what can make one man's voice of greater value than another's? Is he richer, or better born, or has he any authority? * There is no Government as yet to attach these things, or any merit to them, therefore in that way, and in an artificial point of view, they cannot enter into consideration.

Would ap-
pear from
other circum-
stances.

No artificial
superiority
then.

Nor if we revert to the PRINCIPLES of nature, that is, our formation by PROVIDENCE, are we one whit better—If a man be stronger, or cleverer, or handsomer, than another, what consideration ought he to have on account of these things? PROVIDENCE has not said whether he should avail himself of them at all, or how far he should be allowed, if he were so authorized. HE has only said that Civil rights must be preserved (see Book I.) and it has appeared that

No natural.

* See the inequalities of men, proceeding from riches, from rank, or from power. Book II. Chap. II.

the only way of preserving them at such a moment, is avoiding any preference—Thus then it appears that there can be no natural superiority at such a time, nor if there were, that we should know how to appreciate it.

No other way of determining but by a majority.

Neither then upon a natural, nor an artificial, ground, can there be any pretence to superiority, at the moment of forming governments—By consequence, all must be determined by a majority, for when all are equal, there is no other way of establishing any predominance, or prevalence.

Not necessary to a poll.

Not that we mean to say, as we observed before (see last chapter parallelly) that it is necessary to come to a poll for this majority, or that a government is bad, if not so formed—We mean no such thing—We mean not to talk of a question, nor the probability of a question only of what would take place, if it were to happen—That if then any prevalence, or preference of persons were to be established, it would be fatal to Civil privileges.

Majority best way.

But to this it may be objected, that a majority may be wrong—And is a minority never so? The former have equal abilities, and a better chance to be right from being the greater number—It is not an infallible way but it is the best—It should then be taken.*

Conversing with PRINCIPLES only way.

All this however is nothing to the purpose, it is only probable reasoning—The real ground is, that we converse with PRINCIPLES—Conversing then with PRINCIPLES, in the only way we can converse with them, that is, preserving Civil privileges, we say, that there is no other way of preserving them, at the moment of forming Governments (of forming Governments be it remembered we speak) than “excluding no person from his vote,” if it should come to a vote, and “determining all questions by a majority.”

* Whoever rejects PRINCIPLE because it cannot always be followed, declares, that because he cannot be as right as he would, he will be as wrong as he can.

CHAP. IX.

THAT IT DOES NOT FOLLOW FROM MEN BEING "POLITICALLY EQUAL," OR
 "EQUAL IN POWER," BEFORE GOVERNMENT, THAT THEY SHOULD BE SO,
 AFTER.

THAT this is a sound proposition, appears from the following consideration—Why are men "politically equal," or "equal in power," before Government? "Because any political inequality, or difference of power then, would lead to a Civil one, or a difference in Civil privileges, afterwards"—But would that be the case in any subsequent stage of the business? Would any political inequality, or difference of power, then, produce a Civil one? That is a point to be enquired into—It is not then a consequence in itself—It depends upon circumstances.* Depends up-
on Civil privi-
leges.

* There cannot be a stronger proof that Political rights, or rights to power, are not "on account of themselves," for if they were "on account of themselves," it would be a consequence of men being "politically equal," or "equal in power" before Government, that they should be so after it, and always—It is a consequence of men, being Civilly equal, i. e. equal in Civil privileges which are "on account of themselves," before Government, that they should be so after it, and always. Is there any time when men can be murdered, robbed and oppressed?

CHAP. X.

THAT IF MEN ARE POSSESSED OF THEIR CIVIL PRIVILEGES, VIZ. THEIR LIVES, PROPERTIES, AND FREE-AGENCIES, THEY ARE NOT ENTITLED ULTIMATELY TO POWER.

Consequence
of foregoing
—idea doubly
refuted.

THIS is a consequence of the foregoing—If Government originate in CIVIL PRIVILEGES, if CIVIL PRIVILEGES be the whole END, and CAUSE of it, if “all title to Government, or power, must come out of them,” as, we hope, has been fully proved,* then there can be no POLITICAL right, or right to power, independant of them—That is perfectly clear—But even if there could be such a right, contrary to what has been proved, if it could come from any other source than Civil privileges, then it must come from a right to power, as power in itself, Political and Civil being the whole in the world.†—But it has been proved, that there is no such title.‡ The question then is determined—The idea thus doubly refuted.

Civil privi-
leges
ALPHA
and OME-
GA of Go-
vernment.
Confer Poli-
tical privi-
leges.

Civil privileges they are every thing—They are as it were the law, and the prophets, the ALPHA, and OMEGA of Government: After them, nothing is to be demanded. At the same time, however, that nothing is to be demanded after them, they go a great way in conferring political privileges, or rights to power themselves. For it is certain that a considerable degree of power, of what is called political right, (and what really is so, on account of Civil privileges) is necessary to preserve them.

Because can-
not be pre-

For it is very clear, that, in no country, Civil privileges can be pre-

* See Chapter III. of this Book.

† See Chapter I. of this Book.

‡ See Book II. Chap. III.

served long, unless there be a certain degree of power, which then becomes political right, to preserve them.* Such is the corruption of human nature, that power is necessary to counteract power. But we shall suppose the contrary for a moment—We shall suppose a very small minority, or even a single individual sitting in the heart of a country, and possessing the whole power of it, yet preserving, necessarily, and inevitably by the Constitution of it its Civil privileges, the question will then arise, how far the majority, the great majority, have a right to claim power? We answer, that they have no such title, (the case never occurred, but we suppose it for the sake of argument) and we answer, upon the ground, that it would be supposing a right to power. But it may seem hard perhaps, that the great majority of the country should be deprived of power, while the small minority have it—But where is the hardship of this, if their Civil privileges be preserved? It is only for Civil privileges, that there is power at all, and it is from our sense of the value of these privileges, and of the necessity of power to preserve them, that we ever think it any hardship, and we cannot get rid of the idea—What makes it clear that it is no hardship, is, that this supposed country has got the ends of Government already, those ends, “for which it was, and without which it would “never have been”—Another thing is if they have a right, they may prosecute it, and so in struggling for power, get a worse Government, or lose the end for the means, which is impossible—But what ends the question at once, is, that if there be such a right, it must be either natural or artificial. If natural, i. e. original, it has been

served without.

If majority could preserve, no hardship to want them.

Right to claim, natural, or artificial.

* “Not in any individual, particularly, or separately, or as a property, or as power,” (like Civil privileges) but “generally and aggregately, in the community, as a means of preserving Civil “privileges.” See on this Chap. III. of this Book, on the Origin of Political right.

None. I have proved that there is no such right to power.* If artificial, the ends of Government are secured already.†

CHAP. XI.

THAT ALL GOVERNMENT IS EITHER LEGAL OR ARBITRARY.‡

All Govern-
ment either
Legal or
Arbitrary.

WE are now come to the formation of Government, and now that we are come to it, we say, that all is either Legal, or Arbitrary—Legal, which proceeds by fixed and settled rule (*lex*, as the name im-

* See Book II. Ch. III.

† By men not being entitled to power, if they possess Civil rights, we do not mean, that by the possession of Civil rights, they are disqualified from possessing power, or have not a fair pretension to it along with others. We only mean, that they suffer "no injury, no injustice, *stricto jure*, and ultimately, in being deprived of it."—In legal language, there is no right without a remedy—If a single individual were positively, and directly, absolutely, and unqualifiedly deprived of a Civil right, told he must be *murdered*, for the public good, he would be entitled, *stricto jure*, and ultimately, to overturn a Government, if he could, and take any chance to help himself, and this upon the PRINCIPLE of "*Fiat JUSTITIA ruat cælum*"—But would this be the case with power? No,—If many, many were deprived of that, they must be content to put up without it, except as necessary for Civil privileges—This then ends the question—This, if possible, shews it more clearly.

‡ It may be a question here, whether there be not some Governments of a mixed kind, or rather, whether all have not been so mixed, inasmuch, as we have never yet seen any of a perfectly Legal, or perhaps perfectly Arbitrary, nature—That is, we have never yet seen, any, where no will, absolutely no will, entered on the one hand, or no law, absolutely no law on the other—But if we go to this, we may go to endless distinctions—The next question may be how far mixed, and so on in *infinitum*.—The only way then to take them, is, like all these subjects, perfect in their kind, so to define them, and then to characterize other things as more or less approaching them—This is the only way—Then we know what we are about—Then we have clear ideas.

plies) and Arbitrary, by the dictates of its own will, and pleasure, (*arbitrium*)—And there can be but these two kinds of Government in the world, for power must either proceed with rule, or without it.

CHAP. XII.

THAT LEGAL GOVERNMENT IS A GOVERNMENT OF FIXED AND SETTLED RULE.

BUT the foregoing is not enough—It is not enough to state that all Governments are either Legal or Arbitrary—We ought also to enquire a little into what constitutes them such, seeing, that they are the principal hinge upon which the comforts of a man's life depend, as far at least as he can have any external guard or assurance for them. Foregoing not enough.

And seeing that Government is this principal hinge, this pivot, upon which man's human happiness turns, we have to observe in the first place, that the distinction between a Legal, and Arbitrary Government, corresponds exactly to that which we made in our seventh chapter of this book, between an open, and a close one. An open, which has in view the interests of all, and protects the interests of all, that is, the Civil privileges of all, equally; and a close, which has in view the interests of some, and protects the interests of some, that is, more than the Civil privileges of some, particularly. Legal and Arbitrary same as open, and close.

For if a Government be Arbitrary, or of will, that is, of the will of any one man, or set of men, or description of men, it will consult the interests of that one man, or set of men, or description—That is human Because men lean to their interests.

nature—We need not go about to prove this—We might as well attempt to prove, that a bowl has a bias, or any other the propensity of nature—The fact is so—And seeing that it is so, the bowl will always follow it's bias, and so will self, or what is connected with self, or the like of one's self, personal, particular, or appropriate, invariably lean to its interests.

That being the case then, a Government of will, or an Arbitrary one, regulated by one man, or set of men, or description of men, will always be a Government of closeness—Of closeness strictly, and properly so called, that is, devoted to the interests of some sort of men particularly, and a Legal, being conducted by general will, the contrary.

What constitutes them.

Seeing then, that this is one, and the same distinction, one, and the same description of Governments, a Legal, and Arbitrary, an open, and a close, let us pursue it—Let us take up Legal, and Arbitrary, open, and close Governments, and examine them strictly—Let us see into their natures, their constitution, and their essence, and endeavour to find out what really makes up, and composes them.

Vain distinction.

But here we ought to observe, first, that if Legal, and Arbitrary turn out what we imagine them to be, there never ought to have been this distinction—All ought equally to have contributed to the preservation of Civil privileges, all ought equally to have been exempted from pleasure, and discretion—This however has not been the case.—We must therefore take it, as the fact has happened.

Legal persons fixed who make laws, and laws altered maturely.

Taking it then as the fact has happened, we say, that Legal Government is a Government of settled rule, and Arbitrary, of varying will, and inclination—But how is this rule to be settled, and what makes the varying of this will, and inclination? Law may be settled two ways, either as to the persons who make it, or as to the manner of making, and altering it—How these persons are to be constituted and fixed in Government, so that they cannot be changed

at all (if well fixed at first) and how the laws which they make, must be altered, so as to be altered as deliberately, and maturely as possible, when they call for alteration, is another thing, but this in the mean time—And the less liable the former are to be changed at all, and the latter without due, and mature deliberation, the more of a Legal Government it will be.

But it will appear perhaps, that if the fixture of customs and laws make a legal Government, the Persian Monarchy was such, because it had fixed laws, so much so that those of the Medes, and Persians were proverbial—That these however were considered [as Arbitrary Governments—But there is no contradiction in this—The laws and customs which were so unchangeable might relate to matters of religion, or even giving power to the Prince himself.

Persian and Median Monarchies.

For it is the fixture of laws, and customs, that distinguishes Legal, or lawful Government, from that which is absolute, and Arbitrary—It is the fixture, the firm establishment of these laws, that, excluding the will, the occasional, sudden will, of any one man, or set of men, or description of men, which has no law, but its own motive, no rule, but its own wantonness, and desiring, that constitutes the Legality of Governments.

Fixture of laws, Legality of Governments.

For if you ask any one, what a Legal Government is, the idea that presents itself immediately to his mind is something that's fixed, and settled, not wilful—Tied down by law, not abandoned to caprice—Fixed, settled, and established by rule, establishment or custom; so as to exclude caprice, or inclination.

Excludes caprice.

But this you will say, supposes always, that these laws are founded on JUSTICE—Not at all—JUSTICE does not constitute the Legality of laws—It is only because laws are generally consentaneous to JUSTICE, and that men act very unjustly without them, that we couple the ideas, there is no natural connexion between them.

Legality nothing to do with JUSTICE.

Depends upon fix-
ture.

For the laws of a country may be as bad (as they will, that will not shew that the Government is illegal, (without law) only, that the laws are bad—Let them be good, or bad, pernicious, or salutary, will is equally excluded.*

Even if a law for arbitrary power, legal.

Then, says some one if there were a law, for a Monarchy, an Aristocracy, or a Democracy, with power in their hands, to do what they pleased, would you call this a Legal Government? Certainly as far as that goes—It would be a play upon words, because law is a rule of conduct, and this would be none, but taking the word against itself, it would be a Legal Government.

Fixed rule, whether good or bad.

Law then is a fixed rule of conduct, whether good, or bad, beneficent, or pernicious. By consequence, a Government of law, is a Government of fixed rule, without any relation to it's nature, and tendency.

Arbitrary unfixed.

A Legal Government then is a Government of law, or settled rule of conduct, an Arbitrary, a Government of caprice and inclination—A Legal Government is a fixed thing—An Arbitrary, an unfixed—A Legal Government is an immutable thing (properly immutable)—An Arbitrary, a mutable.

Legal not change by caprice or inclination.

What then says some one, if laws ever change, you say, it is not a Legal Government—No, we don't say that—We only say, it must not change by caprice or inclination—It must either not change at all, or change in such a way, that caprice, or inclination shall have no hand in it.

Negative of *sic volo, sic jubeo, &c.*

We have then got one step further—A Legal Government is either a Government of fixed rule, or so far fixed, that it must not change by caprice or inclination—It is the negative of Arbitrary will, or inclination.

* A Legal Government, or rather an attempt at Legal Government, may be bad, barring the certainty of it, and an Arbitrary, good, under a good Administrator.

tion, "*Sic volo sic jubeo, stet pro ratione voluntas.*" Mere will must have nothing to do with it.

And we may add here, that if we want an illustration of Legal, and Arbitrary Government, we shall find it in the history of ^{Idea of Legal and Arbitrary inferred from history.} ancient nations—Those of Assyria, Persia, Babylonia, most of Asia, Africa, with the earlier periods of Greece, give a picture of the latter, those of Carthage, Sparta, Athens, Rome, and most of the Grecian Republics, of (attempts at the) the former.*

This then is the idea of a Legal Government, a Government of law, and of Arbitrary, a Government of will and inclination.

CHAP. XIII.

THAT ARBITRARY GOVERNMENT IS A GOVERNMENT OF WILL OR CAPRICE.

AND if Legal Government be a Government of rule (as the name we said, implies) so is Arbitrary, a Government of will—Of mere will and caprice, not subject to the direction of any precept—As Legal is the exclusion of will, so is Arbitrary, the exclusion of law.

And here it may be observed, that it has been usual, to take the distinction between Arbitrary, and Legal Governments, as resting upon the relation between the Governing, and the Governed—As if it touched upon the connection between Prince and Subject, and nothing else†—But it does no such thing—There is another surely, and much truer way of taking it, and that is, all through Government,

* We cannot too often notice, that there never have been, we believe, any perfectly Legal, or perfectly Arbitrary, Governments in the world—But the best way, we also think, is to define them perfect, and then leave them to explain themselves.

† Prince is taken in the sense of Sovereign, or the person, or persons possessing the Supreme power, whether King, Nobility, or People.

considering it, as not only implying the relation between the Governing, and the Governed, or Prince, and Subject, but also between the Governed among themselves, and that through all their situations and connections.

Prince may
suspend laws
between Sub-
jects.

For this relation between the Governed among themselves, as applying to Arbitrary Governments, does most certainly as much exist in these, and constitute as clear a ground of distinction, as between the Governing and the Governed—For what is Arbitrary? Acting as the person pleases—If then, the Prince or Sovereign, no matter whether King, Nobility, or People, act as they please, cannot they suspend any laws there may be, between Subject, and Subject, as much as between themselves and the Governed?

Inferred from
word.

But indeed from the very meaning of the word Arbitrary, we might infer as much, without going to the power of the Prince—For what does Arbitrary, as we said, mean? Will—If there be will then, if the Government be properly Arbitrary, taking it in the extreme, will must extend all through, it must reach from one end of the Government to the other.*

Nothin fix-
ed.

But there is no occasion for this. We may barely content ourselves with observing, that in an Arbitrary Government, if it be Arbitrary at all, the Prince or Sovereign, be he who he will, King, Nobility, or People, must have the power of suspending the laws, and then instantly all is Arbitrary—Nothing can be Legal that is not fixed, and where there's a suspending power, suspending, of Civil, Criminal, and Constitutional, or rather all Civil, relating to the citizen, as we said, there's nothing fixed.†

* Could there be a plainer proof of this, than in ancient Persia, where the Satraps, or Governors of Provinces, notwithstanding they had the most Supreme, and Absolute power within their own Territories, were no more than slaves of the Supreme Lord or Master over all? And were so called, as witness Xenophon, who when talking of Cyrus, the Younger, who waged war against his brother Artaxerxes, terms him ΔΟΥΛΟΣ.—See Xenophon *Kyros Anabasis*.

† All these remarks must be taken generally—There may not, as we said, have ever been

Here then an Arbitrary power goes from one end of the Government to the other, and is not more to be considered between Prince and Subject, than between the Subjects among themselves—It is no-wise confined—It extends all through—Extending then all through, what is it?

It is an absolute power in the Prince, be he King, Nobility, or People, of doing what he pleases—Of not being confined by any law, of not consulting any rule, but his own inclination.

As Legal Government then is a Government of fixed institute, so is Arbitrary, of will, and inclination—As Legal Government is a Government of rule, so is Arbitrary, a privation, and exclusion of it.

An absolute power in the Prince.

Legal Government, Government of rule, Arbitrary, exclusion of it.

CHAP. XIV.

THAT LEGAL GOVERNMENT IS THE BETTER FOR CIVIL PRIVILEGES.

AND this I think, cannot well be doubted by any one, who looks to the difference between Legal, and Arbitrary Government—For what is Legal? Is it not a Government of rule? Of rule then it must be for preserving Civil Privileges—For (barring that such are the end of Government, and it will appear that Arbitrary is none at all) can we expect that men would ever make rules against their Lives, Properties and Free-agencies? That is not to be looked for—They would certainly make rules to preserve them—They would make rules to render themselves as happy as possible, and it appears that all hap-

Cannot be doubted by any who examine.

Governments of a perfectly Legal, or perfectly Arbitrary description, that is, where absolutely no will entered, or absolutely no law, nothing fixed (except perhaps in Africa)—But these remarks, as we say, are to be taken generally, the Governments defined perfect, and then others distinguished more or less, as approaching them.

piness is contained in these privileges—We must then think them very bungling indeed, and such as we see them in nothing else, if attempting to preserve these privileges, what they made for the purpose came no nearer it, than that which was nowise so intended, or designed, nay calculated for a contrary purpose, viz. Arbitrary Government.

If did not
appear from
intention of
man, would
from what he
has accom-
plished.

But if it did not appear from the intention of man, that Legal Government must be the better for Civil privileges, it would from what he has actually accomplished—For what has been his constant endeavour in establishing, or abolishing Governments, but to preserve these privileges (these sacred privileges in Government, as we may call them, humanly speaking) of Life, Property, and Free-agency? They are the only ones, as we have observed, that he has uniformly, and universally felt, constantly struggled and rebelled for, having in this way almost the divine impression upon them*—And if men have endeavoured to preserve them, they have succeeded in some degree—They have always made something when in any way left to themselves, that was better for Civil rights, though falling far short of the real thing, so incalculably better that it is foolish almost to state it, than Arbitrary Government.

Examine
attempts at
Legal Go-
vernment.

Examine the attempts at Legal Government, though, far as we observe, from being strictly so, and see whether they were not all of this description—Though certainly not genuine, or preserving Civil privileges in a full degree, as will be explained hereafter, whether they did not better do so, than those of a Monarchical, or Despotic nature—Whether the Democracies of Greece, the Republic of Rome, even the Republic of Carthage, which was Aristocratic, did not better preserve Civil rights than their own, that is, the Grecian Monarchies. They were it is true, more, or less,

Grecian, Ro-
man, Cartha-
ginian.

* See Book II. Chap. V.

inclined to different spirits, as will also be explained, but they all preserved Civil rights in some measure. If different ORDERS had their will, they had it in the shape of law, which is something—Perfectly different from the *Sic volo, sic jubeo*, of Arbitrary Governments, they were obliged to maintain some respect for public opinion, some decency and decorum in it—Would any one ever think of comparing the Governments of Greece, let them be Democracies, or Aristocracies, or what they would, with the Babylonian, or Persian Monarchies? Persian and Babylonian Monarchies.

But indeed that Legal Governments are the better for Civil privileges, might appear from the nature of the subject itself, without needing further illustration, when we consider the corruption of mankind—If we were all Angels, then indeed, there would be no occasion for government—There would be no need for any fetter, and restriction—But as long as we are imperfect beings, as long as we are infirm, and incomplete, as long as we are not as the Greeks call it, *αυταρχεις*, the very name of a rule is a recommendation, the very idea of a restriction is a merit. Might appear from nature of subject.

And the more so, when we consider the tendency of power to corrupt, and what a poisonous tendency, and influence it has on the mind—Prosperity itself is apt to pervert, and breed an insensibility and want of compassion to the woes of others—The instance of Hazael in scripture,* is by no means singular. But besides this, the very idea of power, breeds a notion of right, for when a man is able, or has been, to do a thing for a certain time, he believes he has a Poisonous influence of power.

* See 2 Kings, Chap. viii. ver. 12 and 13—“And Hazael said, why weepeth my Lord? And he answered, “Because I know the evil that thou wilt do, unto the children of Israel—Their strong holds wilt thou set on fire, and their young men wilt thou slay with the sword, and wilt dash their children, and rip up their women with child”—And Hazael said, “But what is thy servant a dog, that he should do this great thing?” And Elisha answered, “The Lord hath shewed me that thou shalt be king over Syria.”

right to do it. When we consider the joint effect of these upon the mind, we cannot wonder if their influence should be astonishing.

Nothing else
than this
account for
the excesses
of mankind.

And nothing else than this, can account for the amazing excess we have seen man commit, when he has got into power, as if he had absolutely changed his nature—For the enormities he has perpetrated when he has been so placed, and all (except a few) more or less, according to their different dispositions, and circumstances—In Monarchy, it was more intense, † in Aristocracy, more diffused, ‡ in a Populace, or People, more malignant and violent §—But all somehow—This is Polybius' *ἀνακυκλώσις πολιτειῶν*—Monarchy by its excesses, says he, turns into Despotism, Despotism into Aristocracy from the resistance of the Nobles, Aristocracy into Oligarchy from the same corruption, Oligarchy into Democracy from the impatience of the People, Democracy into Ochlocracy, from a similar abuse, and Ochlocracy back into Monarchy, and Despotism again, from the intolerance of the nation for these disorders, and their desire of a master, no matter who, to controul them*—All gave into excesses when they got into power, and all in their own fashion, perpetrated in another way, the very things that had brought their predecessors to ruin.

Appears
from in-
tention of

From all then that can be seen, from the intention of Government, from the way of executing that intention, from the corruption

+ See Roman Emperors.

‡ See Venice.

§ See France, under Robespierre.

* The last part of this picture was exactly exhibited in France, for it was precisely because the nation were so tired of Revolutions, that they relapsed into the hands of Buonaparte—And it remains yet to see how far the remaining part of the painting, may be filled up—Certainly they have been completed in other nations—Meantime, see the whole of the passage alluded to, in Polybius, from p. 11. Vol. II. Ed. Lips. to p. 13. "Αυτὴ πολιτεῖων ἀνακύκλωσις, αὐτὴ φύσεως διοικησία, καθ' ἣν μεταβάλλει, καὶ μεθίσταται, καὶ πάλιν εἰς αὐτὰ καταντᾷ, τὰ κατὰ τὰς ΠΟΛΙΤΕΙΑΣ."

of human nature, from the tendency of power to pervert further, and above all, from the examples, which reinforce, and strengthen this theory, it most prominently, and most evidently, appears, that the restriction of Legal Government, its rule, and essence, is better, how incalculably better for Civil privileges, than Arbitrary!!!

Government, &c. that Legal Government is incalculably better for Civil privileges than Arbitrary.

CHAP. XV.

THAT ARBITRARY GOVERNMENT IS THE WORSE FOR CIVIL PRIVILEGES, AND THE WORST POSSIBLE.

THIS is a consequence of the former—If a Government of law, of fixed rule, be the better for Civil privileges, then of course, a Government of will, of wanton, and pure will, must be the worse, and the worst possible—And it is evident that it must be so, when we consider all the injuries, to which men must be exposed in these Governments—It may perhaps happen to be sure, that Civil privileges are tolerably preserved, but this is the very mischief, that all is uncertain—All lies at the whim of the Prince, be he King, Nobility or People, Civil, Criminal, and Constitutional, or rather all Civil, (regarding the Citizen), as we have so often said, and may be suspended at his pleasure—Can it be called protection, when he, or they, or their favourites (and this applies equally to King, Nobility, and People) * hoping to be screened by their masters, may interrupt, or embarrass, or overturn at discretion?† It would be better almost, that all were abolished at once, or even that the worst things prac-

Consequence of foregoing.

* Το ΗΘΟΣ τὸ αὐτὸ, καὶ ἀμφὶ δεσποτικὰ τῶν Σελτιῶν, καὶ τὰ ΨΗΦΙΣΜΑΤΑ, ὡς περ ἐκὶ τὰ ΕΠΙΤΑΓΜΑΤΑ· Καὶ ὁ ΔΗΜΑΓΩΓΟΣ, καὶ ὁ ΚΟΛΑΞ, οὐ αὐτοὶ καὶ ἀνalogοὶ καὶ μάλιστα ἑκάτερος παρ' ἑκατέρῳ ἰσχυροῦσι, εἰ μὴ ΚΟΛΑΚΕΣ παρὰ ΤΥΡΑΝΝΟΙΣ, οἱ δὲ ΔΗΜΑΓΩΓΟΙ παρὰ τοῖς ΔΗΜΟΙΣ τοῖς τοιούτοις. Arist.

† Law liable to be overturned may be compared to a frozen river half thawed, which is neither solid enough to walk upon, nor liquid enough to swim through.

licable, were made into law, and institute. Then indeed, men would know what they had to depend upon, and what they had to expect, which is some consolation,

“Una salus victis, nullam sperare salutem.”

One protection
for CIVIL
PRIVILEGES,
FIXED IN
INSTITUTE.

And this shews what these Governments are, when even their worst mischiefs as it were, are benefits, when made into a certainty—No, there is but one protection, and that is, substantial, solid institute, which cannot, and will not be, overturned—Which either cannot be changed at all, or cannot be changed, without good, or apparently good, reasons—Which must be gradual, and deliberate, and sensible—Which either must be settled so, that it cannot change, or changing, must resemble the changes of nature, which are ever effected, without altering its causes—This is right law, this is the proper guard for CIVIL PRIVILEGES—This is the difference between Legal, and Arbitrary Governments, which, if we were to discuss them eternally, would ever return to the same thing, that Legal are fixed and settled, Arbitrary unfixed, and inconstant—This then being the difference between these Governments, Legal are the better, how incalculably better for Civil privileges, and Arbitrary the worse, and the worst possible.

LEGAL,
better for
CIVIL
PRIVILEGES, and
ARBITRARY,
worst possible.

CHAP. XVI.

THAT ARBITRARY GOVERNMENT IS TO BE THROWN OUT OF THE QUESTION.

WHEN the antient Megarenses came to consult the Oracle, in what rank of nations, they stood, the answer was

Τμεις δε Μεγαρεεις εδε τριτοι, εδε τεταρτοι
Ουδε δυωδεκατοι, εδ' εν λογω, εδ' εν αριθμω*

* The ideas of LEGAL and ARBITRARY Government correspond to those of ΙΝΕΞΙΟΣ and ΝΟΘΟΣ among the Greeks, LEGITIMATE and SPURIOUS.

CHAP. XVII.

THAT LEGAL GOVERNMENT DEPENDS UPON A BALANCE.

IF Arbitrary Government be a Government of will, Legal Government must be an exclusion of it—And how is this to be accomplished? By making such an opposition of wills, as shall prevent any one will from leading, or predominating.

Legal Government depends upon a Balance—

It is thus we obtain that joint will, that complicated and compounded one, which is not the will of any one man, or set of men, or description of men, but of several jointly.

Thus it is, that we correct the imperfections of our nature, and obtain an artificial virtue—Thus it is, that we avoid that swing, which is the mischief of Arbitrary Governments, and makes absolute power, no human portion*—Thus it is that we get a moderation, and measure, a middle and medium, by the clash of extremes, by the dash of wills, which is the only BASIS of true law, the only FOUNDATION for SOUND GOVERNMENT.

Only FOUNDATION for SOUND GOVERNMENTS.

CHAP. XVIII.

THAT A BALANCE DEPENDS UPON A DIVISION OF POWER.

HOW can the wills be balanced, unless there be power to fortify them?

Balance depends upon a Division of power.

* It was for this reason once very well said, that on the same ground, that the DEITY should have, as HE has, Supreme power, no human being should be invested with the like authority.

CHAP. XIX.

THAT A DIVISION OF POWER, DEPENDS UPON POWER, AND PERSONS.

Division of
power de-
pends upon
Power and
Persons.

A Division of Power depends upon two things, viz. Power, and Persons—It depends upon Power, as more may be given to one Person than another—It depends upon Persons, as one Person may be naturally stronger than another—First then, as to Power.

CHAP. XX.

THAT ALL POWER IS TO BE DIVIDED BY LEGISLATIVE, JUDICIAL, AND EXECUTIVE.*

All political
power
LEGIS-
LATIVE.

ALL political power is, properly speaking, Legislative, as it relates either to the making of laws, or the executing them, which widely speaking, includes their application—For whatever is done in any country, is, or ought to be done according to law, and then it is only following out, and realizing the law.

Intention of
laws, to be
applied and
executed.

And what plainly shews that all political power is properly speaking, Legislative, is, that when a law is framed, it is the intention of that law, that it should be applied, and executed, that is judged upon,

* It must be seen, that by Power, is meant LEGAL power, as Arbitrary is now thrown out of the question, and taking the thing in that way, there is nothing but LEGISLATIVE, JUDICIAL, and EXECUTIVE—Every thing that is done in Government, must be done by one or other of these THREE—It must be perceived, that issuing an edict like the Roman Emperors, or suspending a law, or superseding the execution of a law, is all Arbitrary, it cannot therefore come into consideration—All then must return to the LEGISLATIVE, JUDICIAL, and EXECUTIVE, as far, as that goes, the above being spurious.

and enforced—That follows of course—Indeed, it is no more than realizing the law—Till it is so judged on, and enforced, it is no law, it is only an airy institute, (that is, if there be occasion for executing it) without body, or substance—It had as well not be, and in some cases, much better—For if the law be ill applied, that is, not properly judged on, so that the innocent are confounded with the guilty, it had better not be—And if, after the guilty are convicted, they are allowed to escape, it had as well at least, not be—So also of Civil cases correspondingly—So that it is evident, that the Judicial and Executive powers are parts of the Legislative, and that too, in their first essence, and origin.

At the same time, as these powers have been usually considered as distinct, and have certainly a distinct weight in the Constitution of a State, they shall be treated, as they necessarily must be, separately—And treating them in this way, we say, that they comprehend the whole force of Government—That they together make up that mass of power, which we call Government, and contain in them, whatever can be either desired, or could exist, or does exist in it.

For if we refer to the motives, which first induced men to Government, what could they be? What, but to preserve their Lives, Properties, and Free-agencies, those natural PRIVILEGES which have been denominated, Civil, and without which, as we have seen, there is no happiness in society*—And if this was their motive, and their sole motive, what more effectual way could they take, indeed what way could they take at all, but forbidding men to invade, enquiring if they did invade, and punishing them for invading them? They could do nothing else than this—It was the sole protection they could afford them.

Aye, but says some one, what do you say of Civil matters? What do you say of the protection, that is afforded men, by adjusting the rights, and questions of property between one

* See Book III. Chap. I. II. III.

another? We say, that it is a more enlarged protection—The same protection extended in another shape, arising from a more advanced state of society, but still within the LEGISLATIVE, JUDICIAL, and EXECUTIVE.

But still say they, this is not all—There is still something else wanting to protect Civil privileges—There is something wanting to render this system of law, of which you talk, and which does protect them, permanent—To take care, that it does not fall to decay, that it is not destroyed either by foreign, or internal enemies—In a word, to support it.

You mean the State—That we should have a force to defend, and protect it—Fleets to cover it, troops to march out against its enemies, treaties made, alliances confirmed, and strengthened, internal affairs administered—Granted—All this is very necessary, and all this is within the LEGISLATIVE, JUDICIAL, and EXECUTIVE—As it was well said by Hume, “armies, forces, and fleets, treaties, alliances, and ambassadors, are all to support the TWELVE JUDGES, it is only doing the same thing in a different way.*

It appears then, that whatever is done, either for preserving Civil privileges, or preserving the system, that is to preserve them, is to be found in the circle of the LEGISLATIVE, JUDICIAL, and EXECUTIVE.

Speculative
extent of its
powers.

But setting aside the motives to Government, that is, the ends men had in view, it might appear methinks from the speculative extent of its powers that there could be no other, than these.—For what can we conceive, beyond the LEGISLATIVE, JUDICIAL, and EXECUTIVE.

* We are, therefore, to look upon all the vast apparatus of our Government, as having ultimately, no OTHER OBJECT or PURPOSE, but the DISTRIBUTION of JUSTICE, or in other words, the SUPPORT of the TWELVE JUDGES—Kings, and Parliaments, fleets, and armies, officers of the court, and revenue, ambassadors, ministers, and privy counsellors, are all subordinate in their END to this PART of administration—Even the Clergy, as their duty leads them to inculcate morality, may justly be thought, so far as regards this world, to have no other useful object of their institution. See Essays, Vol. I. p. 35. Oct. Ed.

TIVE? What is our idea of governing? Is it not directing men's actions by fixed rules, let them be made by whom they will (for we talk not of Arbitrary sway, of which there is no reason and account, and which cannot therefore enter into any reasoning, and account,)* and if this be our idea of governing, how can we direct them otherwise, than by telling them what they are to do, enquiring if they do, and punishing them for not doing it, and correspondingly in the Civil? There is no other way than this, nothing else in the whole circle of regulation.

But setting aside the motives to Government, or the speculative extent of its powers, what do we see in actual practice? What do we see, but either framing laws, or applying, or executing them? What, but either regulating the internal concerns of a State, or providing for its defence against foreign enemies? What, but either restraining the crimes, that perpetually arise, or confirming its strength, by treaties and alliances? What, but either public, or private, foreign, or domestic, general, or particular? Either raising an army, or punishing a crime, imposing a tax, or sending an ambassador? We see nothing else than this, nothing except in the deserts of Asia, Africa, or America.

Taking the thing then, in every way, whether we refer to the motives that prompted men to Government, or to the speculative extent and compass of its powers—Whether to the ends they had in view, or to any mode or manner of accomplishing them—Whether to its origin, and PRINCIPLE, or to its actual exemplification in fact, it all comes to the same thing, it ever returns to the LEGISLATIVE, JUDICIAL, and EXECUTIVE—So much for the powers—Now for the persons that they are to be divided among.

* See Ch. XVI. "Οὐδ' ἐν λόγῳ, οὐδ' ἐν ἀριθμῷ."

CHAP. XXI.

THAT THERE ARE IN EVERY STATE, THREE INTERESTS OR ORDERS, MONARCHY, ARISTOCRACY AND DEMOCRACY. §

Three Interests in every State, MONARCHY, ARISTOCRACY, and DEMOCRACY.

THIS is one of the most important points, that can come under consideration in the whole subject of Government—To every one, who examines ever so little the theory of States, it must be obvious, that in every country, that can be called a State, there are three Interests constantly contending, or ready to contend, when they have the opportunity, and these are MONARCHY, ARISTOCRACY, and DEMOCRACY.

It is nothing to say here, that every State, is not a Monarchy, an Aristocracy, or Democracy—That every State is not either governed by One, which is a Monarchy,* or the Nobles, which is an Aristocracy,† or the Many, which is a Democracy.‡ That every State is not, even a mixture of these elements—But there are these Interests in every State—There is a One, who would be greatest of all, a Few, who would be greater than the rest, and a Many, who would wish to have things their own way¶—It may appear, that this

§ It may be observed here, that it may appear perhaps, that as Monarchy, &c. imply a degree of power, admixed, it is improper to apply these terms, when we are talking of the naked ORDERS—To this we have only to answer, that there is more colour in these words, and that if any object to them, they have only to read KING, NOBILITY and PEOPLE, instead, and then every purpose is answered.

* ΒΑΣΙΛΕΥΣ, or ΜΟΝΑΡΧΟΣ.

† Οἱ ΑΡΙΣΤΟΙ.

‡ Οἱ ΠΟΛΛΟΙ, or ΔΗΜΟΣ.

¶ The whole of the above extends even to a village. See Gray's elegy in a church yard, on different spirits there

“ Some village-Hampden, that with dauntless breast,
The little Tyrant of his fields withstood ;
Some mute inglorious Milton here may rest,
Some Cromwell guiltless of his country's blood.”

view of the subject is theoretic, but we appeal to all, whether there be not these three Interests constantly ready to operate in a State—And if there be these Interests, if there be this ambition, this pride, and these desires, then, it signifies little by what names they are distinguished, whether MONARCHY, ARISTOCRACY, and DEMOCRACY, or any other.

If there were not indeed these Spirits in a State—If we did not see them ready to come forth, and contend, when they had an opportunity—If we did not perceive them lying like seeds half concealed, yet inherent in human nature, and ever ready to break forth, then indeed, the system might be deemed visionary—But to say, that because they are not always exemplified, that therefore they do not always exist, is to say, that if the circle had never been traced, its rays would not have been equal—“Truth is not the exemplification of things in fact, but their rational relation, and possible exemplification, when the fact happens.*”

Lying like
seeds half
concealed.

There are then these three Interests, constantly contending, or ready to contend in a State, MONARCHY, ARISTOCRACY, and DEMOCRACY—There are these three Interests, constantly affecting, or ready to influence them—Either actually exemplified in bodily shape, or ready to come forth whenever they have an opportunity—And when they do come forth in such shape, they are called MONARCHY, ARISTOCRACY, and DEMOCRACY—But whether they come forth, or not, they are equally Spirits or Interests—And when they do come forth, and are exemplified, they are termed the ORDERS of a

Always three
Interests.

* Besides Gray's Elegy already quoted, see passage in Montesquieu, p. 29. note for, POSSIBLE MONARCHY, POSSIBLE ARISTOCRACY and POSSIBLE DEMOCRACY—It may be added here, that these Spirits are as distinct as possible, from their POLITICAL POWER—Every one of them here named, has, or may have, his consideration, and following, independent of such power—The King, or who wants to be, King, has, or may have, his station, and consequence; the Nobility, or who want to be great, have, or may have, their rank and adherents, and the Many who would have things their own way, have the strength of their numbers—This may be called their natural situation, the other arising from political power, their artificial. See Chap. XXXVII. afterwards on this.

Like Orders
of Architec-
ture.

State—And as it happens in Architecture, that a building may consist either of all the Orders together, or of One, or more separately, so it is of the fabrics of Government—They may either consist of MONARCHY, ARISTOCRACY, or DEMOCRACY SINGLY, or of two of hem, or of all together*.

Such is the nature of these ORDERS, and such their reality, and existence.

CHAP. XXII.

THAT THE SPIRIT OF MONARCHY, IS POWER.†

Spirit of
MONAR-
CHY,
Power.

THAT is, its tendency, and bias, and it is obvious that it must be so, from the situation of the holder—When all is concentrated in ONE, there will desires centre also—That person will naturally draw every thing to himself.

CHAP. XXIII.

THAT THE SPIRIT OF ARISTOCRACY, IS PRIDE.‡

Spirit of
ARISTO-
CRACY,
Pride.

ARISTOCRACY is the rule of the best, so called, from their being the most forward, in birth, fortune, and education—Elevated above the rest, in these points, and holding power on that very ground, they will despise them more and more daily.

* There is a building at Rome, into which, all the five Orders of Architecture, are incorporated.

† MONAPXIA.

‡ ΑΡΙΣΤΟΚΡΑΤΙΑ.

CHAP. XXIV.

THAT THE SPIRIT OF DEMOCRACY IS VIOLENCE.*

THE many are unenlightened from ignorance, that is, want of education—Abandoned then to the rule of their leaders, and inflamed by their own passions, what can they be, but violent?

Spirit of DEMOCRACY, Violence.

CHAP. XXV.

THAT THE THREE POWERS UNITED IN MONARCHY, GO TO DESPOTISM.†

DESPOTISM in its bad sense, is the possession, and abuse of power—When power is constantly encreasing, and by a natural consequence, abusing, what else can it come to?

Three powers in MONARCHY to DESPOTISM.

* ΔΗΜΟΚΡΑΤΙΑ.

† ΟΤΙ ΠΑΝ ΕΙΔΟΣ ΠΟΛΙΤΕΙΑΣ ΑΠΛΑΘΥΝ, ΚΑΙ ΚΑΤΑ ΜΙΑΝ ΣΥΝΕΣΤΗΚΟΣ ΔΥΝΑΜΙΝ, ΕΠΙΣΦΑΛΕΣ ΓΙΝΕΤΑΙ, ΔΙΑ ΤΟ ΤΑΧΕΥΣ ΕΙΣ ΤΗΝ ΟΙΚΕΙΑΝ, ΚΑΙ ΦΥΣΙΝ ΠΑΡΕΠΟΜΕΝΗΝ, ΕΚΤΡΕΠΕΣΘΑΙ ΚΑΚΙΑΝ· ΚΑΘΩΠΕΡ ΓΑΡ ΣΙΔΕΡΩ, ΜΕΝ ΙΟΣ, ΞΥΛΟΙΣ ΔΕ ΘΡΙΠΤΕΣ ΚΑΙ ΤΕΡΗΔΟΝΕΣ, ΣΥΜΦΥΕΙΣ ΕΙΣΙ ΛΥΜΑΙ, ΔΙΩΝ, ΚΑΙ ΠΑΣΑΣ ΤΑΣ ΕΞΩΘΕΝ ΔΙΑΦΥΓΩΣΙ ΕΛΑΒΑΣ, ΥΠ' ΑΥΤΩΝ ΦΘΕΙΡΟΝΤΑΙ ΤΩΙ ΣΥΓΓΕΓΟΜΕΝΩΝ, ΤΟΝ ΑΥΤΟΝ ΤΡΟΠΟΝ, ΚΑΙ ΤΩΝ ΠΟΛΙΤΕΙΩΝ, ΣΥΓΓΙΝΕΤΑΙ ΚΑΤΑ ΦΥΣΙΝ ΕΚΑΣΤΗ, ΚΑΙ ΠΑΡΕΠΕΤΑΙ ΤΙΣ ΚΑΚΙΑ· ΒΑΣΙΛΕΙΑ ΜΕΝ, ΜΟΝΑΡΧΙΚΟΣ ΛΕΓΟΜΕΝΟΣ ΤΡΟΠΟΣ,

CHAP. XXVI.

THAT THE THREE POWERS UNITED IN ARISTOCRACY GO TO OLIGARCHY.†

Three powers in ARISTOCRACY go to OLIGARCHY.

OLIGARCHY in a similar sense, is the rule, and oppression of the rich, or great—Despising the poor more and more, and elevated above them already, by the most evident claims at least to respect, they must trample upon them at last.

CHAP. XXVII.

THAT THE THREE POWERS UNITED IN DEMOCRACY, GO TO OCHLOCRACY.§

Three powers in DEMOCRACY go to OCHLOCRACY.

OCHLOCRACY is like Despotism and Oligarchy, in their bad senses, the rule and oppression of the rabble—Ignorant from want of illumination, and eager to be led, the many will submit themselves to the worst leaders, who will expel the best for their own purposes—Then comes OCHLOCRACY.||

CHAP. XXVIII.

THAT POWER MUST BE DIVIDED EQUALLY TO MAKE A BALANCE.

Power divided equally to make a Balance.

WE have now shewn what Legal Government is—That it depends upon a Balance—That a Balance depends upon a Division of Power, and a Division of Power again, upon Power, and Persons—We have

† ΑΡΙΣΤΟΚΡΑΤΙΑ, δε ο της ΟΛΙΓΑΡΧΙΑΣ;

§ ΔΗΜΟΚΡΑΤΙΑ, δε ο ΘΗΡΙΩΔΗΣ, και ΧΕΙΡΟΚΡΑΤΙΚΟΣ. Pol. Vol. III. p. 15 and 16, and again, Διο και ΓΕΝΗ ΜΕΝ ΕΕ ΕΙΝΑΙ ΡΗΤΕΟΝ ΠΟΛΙΤΕΙΩΝ—ΤΡΙΑ ΜΕΝ, α παντες θρῦλλεσι, και νυν προεირηται—ΤΡΙΑ δε τετοις συμφυη, λαγω δε ΜΟΝΑΡΧΙΑΝ, ΟΛΙΓΑΡΧΙΑΝ, ΟΧΛΟΚΡΑΤΙΑΝ. Ibid. It is to be observed, that what is here called DESPOTISM, Polybius calls ΜΟΝΑΡΧΙΚΟΣ τροπος, and what is here called MONARCHY, he calls ΒΑΣΙΛΕΙΑ or Kingship.

|| Ωσπερ τυραννη τω ΔΗΜΩ χαριζομενοι—Arist. de Rep. lib. ii. c. 12. και ΔΕΜΑΓΩΓΟΥΣ ελαβε ΦΑΥΛΟΥΣ, αντιπολιτευομενων των ΕΠΙΕΙΚΩΝ, ibidem, speaking of Athens. See States of Greece.

further given a general description of power, and persons*—It now remains to say, how power should be divided, and the persons it should be divided among.

And first we may observe, that power must be divided equally—In vain do we divide it for a balance, unless we so divide, as to make some kind of parallel footing, and equality—And here again, it must be also observed, that this is not a precise, and mathematical one, such as depends upon strict accuracy, and dimension, but a general and substantial—It is not the “*αριθμω το ισον*” *equal in number*, but the “*λογω το κατ αξιν*”† *parallel in dignity*—It is this, that will preserve the correlative parts of Government, both in their Legislative and Constitutional relations—That will enable them, at once to proceed equally in their functions of making laws, and also which is the foundation of it, to maintain their place in the Constitution, or form of Government.

Not equal in measure, but parallel in dignity.

CHAP. XXIX.

THAT THE PERSONS WHO ARE TO RECEIVE POWER MUST BE RENDERED EQUAL TO MAKE A BALANCE.

AND if power must be given equally to make a balance, so must the persons who are to receive it, be rendered equal—For as we saw in our nineteenth Chapter that a division of power, depended upon power, and persons, so in endeavouring to obtain this balance, we must look to both—If power then must be given equally, so must the persons who are to receive it, be rendered equal—But this equality again, it must be observed, must (like that of power in the last chapter) not be a precise, and mathematical, but a general, and substantial.

Persons who receive power, rendered equal to make a balance.

Nor a precise and mathematical, but general, and substantial.

* See for above in order, Chap. XX, XXI, et sequentia.

† Plut. Symph.

CHAP. XXX.

THAT TO MAKE THE PERSONS WHO ARE TO RECEIVE POWER, EQUAL, THEY
MUST BE DIVIDED BY ORDERS, AND NOT BY BODIES.

Make persons who receive power equal, must be divided by ORDERS, and not by bodies.

AND if the persons who are to receive power, must be rendered equal to make a balance, then must they be divided by ORDERS, and not by bodies—For if they be not, then will they not be different, but the same persons, so that there can be no question of equality—For there are, as we said, in every State, three Orders, or INTERESTS of men, MONARCHY, ARISTOCRACY, and DEMOCRACY—A ONE, who would be greatest of all, a FEW who would be greater than the rest, and a MANY, who would have things their own way*—There are these INTERESTS, either open, or concealed—Either openly evinced in the shape of MONARCHY, ARISTOCRACY, and DEMOCRACY, or ready to come forth, whenever they have the opportunity—Men or bodies of men, who would wish to have the rule, who would desire to have the Supreme power in the State—But along with this ambition and this desire of power, common to all, they have another inclination, which may be denominated an esprit du

* See Chap. XXI. of this Book. If it be doubted whether these Spirits really do exist in human nature, what could make Julius Cæsar say, that “He would rather be the FIRST man in a Village than the second in Rome,” but this very spirit of a ONE, who would be GREATEST of all since he had no other connexion with a village? And if we see in the humblest hamlet, not to talk of towns, persons who would set themselves forward, and ascribe to themselves every thing genteel, what is this but the FEW who would be GREATER THAN THE REST? A Lady described herself in a stage coach as visited by all the QUALITY OF BRENTFORD—And if there be a multitude, who resist all this, and maintain that things should be upon a GENERAL FOOTING, is not this again, the MANY, who WOULD HAVE THINGS THEIR OWN WAY? It is nothing to say (returning to the Great) that in some countries, Russia for instance, these Spirits do not manifest themselves—Do they for that less exist? As well might you conclude that a man does not walk, because his legs are chained, or that a river is not water, because it is frozen.

corps, or spirit of their ORDER—This spirit attaches them to that ORDER, and makes them invariably cling to their fellows—It makes them always look upon them as their friends, and those of another ORDER, comparatively speaking as strangers, or enemies—And this spirit arises from education, and habit, and situation, and connexion, and a number of external circumstances—The fortunes they feel themselves in, the education they have had from these fortunes, the ideas that they have imbibed from these educations, and the circumstances they daily meet with, to reinforce these ideas, give them such a strong bias, that you can never in any way eradicate it—It is founded on a feeling in human nature, and before you can ever take it away, you must alter human nature itself*—Now as to this feeling so founded in human nature, it operates in all these orders, according as it has an opportunity—In MONARCHY, it has no opening at all, because that is not social, but sole—It is ONE entire in itself, it can therefore, speaking as to itself, have no relation, or connexion—It cannot be divided into parts, it is not separable into portions, so that these parts, can discover any sympathy, or mutual connexion contradistinguished from others.

Members of
ORDERS
cling to
their fellows

Monarchy
can't dis-
cover it.

As to ARISTOCRACY, that speaks out more plainly—That declares itself sufficiently intelligibly—The rich and distinguished, the NOBLES of every country, the ΟΙ ΑΡΙΣΤΟΙ as they were called by the Greeks, draw to one another—They always cling to their own ORDER, seem to regard others as a separate cast, and to contemplate them with a kind of insulated alienation.

ARISTO-
CRACY
speaks more
plainly.

Nor is this confined to ARISTOCRACY—It is the same thing with DEMOCRACY, only evinced in a different manner—However they may feel flattered with the attentions of

So DEMO-
CRACY.

* It is to be observed here, that when men get into power, or associate with those who have it, they often drop the spirit of their old ORDER, and take up a new—But this does not shew that men do not draw to their ORDER, but that they change their ORDER.

the Great, give them an opportunity, and you will always find them a separate Interest—In a city, a town, or a district, where they have an object to contend for, and can contend with the rich, you will always see them come forward with the most active hostility—Then you will see, whether they are an ORDER, or not, an ORDER with distinct predilections, and interests. They will then shew you that they consider themselves as such, and that in all contentions where they can contend, they are incapable of assimilating with the others.

No consequence where spirits appear.

Nor is it of any consequence, where these spirits appear, whether in a town, or a village, an empire, or a district—They are equally feelings grafted in human nature, whatever their exemplifications*—Does any one suppose that there cannot be a MONARCH in a village, or an ARISTOCRACY, or a DEMOCRACY?†

Can't be eradicated.

These feelings then, being in human nature, how can we ever hope to eradicate them? How can we ever hope to undo what Providence has done, to make man lay aside his feelings, and to become, as it were, a new creature?

And yet we evidently indulge this hope, if we expect a balance, by separating men from their ORDERS—By cutting and carving these ORDERS into parts, and then hoping that they will oppose each other.

MONARCHY can't be split.

Let us just suppose ARISTOCRACY, or DEMOCRACY (MONARCHY is out of the question, as we said, being incapable of division) split into parts, and that each of these parts, or bodies, had an equal degree of power, assigned them—We shall take ARISTOCRACY for instance—We shall suppose that divided into bodies, and that each of these bodies, was intended to oppose the other—The question is, would they do it? Would they exercise the LEGISLATIVE, JUDICIAL, and EXECUTIVE OR.

ARISTOCRACY? Would make, judge, and execute, laws for own ORDER.

* See the grand passage of Montesquieu quoted in our 13th and 29th pages.

† See again Grey's Elegy in a church-yard.

powers against their own ORDER? Can any one suppose it? Would not they make laws in favour of their own Order to-day, expecting the same favour to-morrow? Would not they determine causes for their fellows at one time, expecting a return at another? Would not they execute, carry on, and administer the daily government of the country, in the same way, expecting all this, and tenfold more in retribution? Would not they, and the other Order in the same manner? Every one feels it, every one thinks it—Every one must be convinced, that there is in human nature, a common sensation of sympathy, and interest—It is upon this principle as a rule of mercy, that the juries in England, are always chosen out of a man's fellows, it being understood, that in that way, he has a better chance for his life.

But still the delusion may return, that some separation, some division may be effected—But it is but a delusion—What division can be accomplished, when for every repulsion you create, PROVIDENCE has implanted a thousand attractions?

The plainest proof of this appeared in antient Rome, where the Government, as we all know, consisted of Consuls, Senate, and People.—Well then, there were three bodies, certainly separate, and so separate that Polybius mistakes them (with all deference to so great an Author) for ORDERS, boasting moreover of the balance arising from them*—Was there then this balance, or did it arise? It so little arose, that we hear of nothing in the whole Roman history, but disputes between the Plebeians, and Patricians, conducting too often to convulsions—Though there were three bodies, there were but TWO disputes, or sides of a dispute, that is PLEBEIANS, and PATRICIANS—Herethen is the strongest proof, the disputes corresponding to the number of the ORDERS—That there were but TWO ORDERS, is plain, for Cicero pronounces, that a Government of THREE, “would be the best,” that is, talks of it as a desideratum, which he could never have

DEMO-
CRACY,
same.

For every
artificial re-
pulsion, a
thousand na-
tural attrac-
tions.

Proof in
Rome.

Three bodies.

But TWO
ORDERS.

*Οτι ἀρίστη πολιτεία ἡ ἐκ ΠΑΝΤΩΝ ΤΩΝ Εἰδῶν συνστάσα, καὶ ὅτι ἡ τῶν Ῥωμαίων ἐστὶ ΤΟΙΑΥΤΗ. Pol. Vol. III. p. 3. Ed. Lips. 1764.

Proof of
strongest
kind.

done, if it had existed already†—Besides the thing was evident from the very nature of these bodies—The Consuls were the same as the Senate, for they had neither standing (being only annual) nor authority (being under the Senate to a great degree) nor distinct Interest sufficient, which is more than all the rest put together (being Aristocratic,) to constitute them a different ORDER‡—And it is to be observed, that the very nature of this proof is of the strongest kind, for it at once shews that bodies are nothing, and that those given as an example, were as distinct as possible, from their being mistaken for ORDERS.

No balance
expected
that way.

It is then clear as day, that no balance, or opposition, can be effected, by placing power, in different bodies—Regulate, and model them, as you will, you always leave that spirit, which will predominate and influence them—If then, you split, and divide them in infinitum, what do you do? The $\psi\chi\eta$, (or soul) still remains—It is “totum in toto, et totum in quâlibet parte”—You can never extinguish it—You might as well limit the effect of those figures in Arithmetic, which ever give the same results—You might as well controul the eruptions of Mount Vesuvius, which always, throws out Hexagons—You might as well turn the bowl from its bias, or the Magnet from the Pole, nay alter the principles of Causation itself, as change these inclinations from their leanings, alter these biases from their propensities.

Real opposi-
tion between
the OR-
DERS.

The real opposition then, is opposing the ORDERS to each other—They have a real antipathy, and hostility—They will never join, you may

† “Esse optime constitutam rempublicam, quæ ex tribus generibus illis, REGALI, OPTIMO et POPULARI sit modice confusa.” Fragm. de rep. lib. ii.

‡ An ORDER is a class or rank of men, with different interests from other ranks, and classes. If we want more proof that a Government of three *such*, did not exist at Rome, we have also Tacitus' authority on the subject, who not only thought it did not exist, but that if it could exist, it could not long continue—“Cunetas nationes, et urbes, POPULUS, aut PRIMORES, aut SINGULI, regunt: delecta ex his, et constituta reipublicæ forma, laudari, facilius quem evenire, vel, si evenit, haud diuturna esse potest.” An. i. iv.

be assured, except for the purposes of opposition, that is counteracting some predominating force, or Order—Any other is totally accidental, or rather out of the question, and therefore you are not to reckon on it—This opposition then, of the ORDER, is the real, the natural, the secure, the only to be depended upon—Any other is perfectly Utopian—Perfectly Utopian, because founded upon false hopes, upon the idea that man will change his notions, and from a social, become an insulated, an independent, and chimerical animal.

CHAP. XXXI.

THAT THE THREE POWERS CANNOT BE VESTED IN ONE ORDER TO MAKE A
BALANCE.

THAT the three powers cannot be vested in ONE ORDER, ^{Three powers cannot be vested in ONE ORDER to make a balance.} would follow from the nature of the thing itself, if it did not from the argument of the preceding chapters—Power must be balanced—To be balanced, it must be divided—But how can it be divided, if it be all vested, all its constituent parts LEGISLATIVE, JUDICIAL, and EXECUTIVE in the same Order?

But to be proved is hardly enough—We ought also to ^{See exemplifications.} see the exemplifications of these powers in ONE ORDER, that we may be able to judge of their effects in practice.

And first we say, as to MONARCHY, where do we find an ex- ^{In MONARCHY.} ample of that? We find it in the tyrants of Greece, we find it in the Monarchs of Persia, we find it in the Despots of Africa, we find it in the history, and this last chiefly to be remarked, of the Roman Emperors—There we see the abuse of power, marching exactly hand in hand with the possession of it, till its wantonness rose to a puerile extravagance—And this is the characteristic of DESPOTISM,

that passion, and power, being concentrated in one focus, produce the hottest tyranny.¶

ARISTO-
CRACY.

The next is ARISTOCRACY—This, as we said before, degenerates into OLIGARCHY—Here we have a tyranny of another nature, it is pride grown into insolence, outrage, and oppression—It is not, cannot be, so hot a tyranny as the other, but it is nevertheless full of much severity, and grinding—If we wish to see an example of this, we have only to recur to the Aristocracies of Greece, which, as soon as they became OLIGARCHIES, were suspended.*

DEMO-
CRACY.

The last is OCHLOCRACY, for in DEMOCRACIES, as we know, the three powers come to this termination—And this is a tyranny of a new kind, shewing different characteristics from either of the two former—It is either a Demagogue got possession of power, and committing crimes for his own safety, or it is a Few lording it over the rest, or it is a Mob, in the agitation of its frenzy, pulling down, and destroying every thing†—In all these different shapes, it takes on the resemblance of the rest, but in all it preserves its own characteristic, of envy, and malevolence against the rich, and better born, and original illiberality arising from want of education‡—There is, if we may so say an additional *πικροτης*, or bitterness in its excesses, from the remembrance that the former were greater.§

ORDER
entire pow-
er, sure to
abuse it.

Thus then, it appears that whatever Order receives entire power, that Order is sure to abuse it—That these excesses moreover take the colour of their Order—In MONARCHY, it is caprice and wan-

¶ See for puerility, the story of Caligula triumphing over the sea, and gathering Pebbles by beat of drum, for cruelty, Caracalla driving a chariot along the Mole near Naples, and overturning people into the waves.

* *Κατεπαυτο.*

† An eminent example of this appeared in the cities of Greece—There we see the effects of the three powers in the Multitude, taking the different course of DESPOTISM, OLIGARCHY, or OCHLOCRACY, according to their different situations. See for this Pisistratus, Draco, and the other exemplifications.

‡ *Ανελευθεροτης.*

§ See if this was not exemplified in France, in the years 1792, 3, 4, et sequentia.

tonness*—In ARISTOCRACY, insolence and out rage†—In DEMOCRACY, malevolence, and envy.‡

And hence the absurdity of those, who think they have got liberty, by placing power in a particular ORDER—One set of men, the friends of DEMOCRACY, would give the whole to the People, as if liberty consisted in a King, and Nobles not having any—Another set, the friends of ARISTOCRACY, would give it to the Nobility, in order, as they say, to bridle the multitude, without ever recollecting that the Nobles require to be bridled themselves—A third set, the friends of MONARCHY, would confer it on a King, as if order, which is their way of it, and which is liberty too, properly taken, consisted in domination.

But liberty consists in none of these things—It consists not in the rule of a King, or of a Nobility, or of a Rabble, but in the proper restraint, and opposition of them—It is the bridle, and curb of passion, and prejudice, not their gratification, or indulgence.§

And there cannot be a greater mistake in Government, than to think that liberty does consist in these things—For what is liberty? Is it not the proper enjoyment of Life, Property, and Free-agency, those Civil rights, those original privileges, which, as we said in our first Book, could never be taken from man? || And if it be the proper enjoyment of these things, what does it signify whether they be taken from him, by a Monarch, a Nobility, or a People? It is all the same thing—It is all equally privation, it is only done in a different manner.

And that absolute MONARCHY, ARISTOCRACY, and DEMONARCHY,

* ὕβρις, or affront.

† Πλεονεξία, or overbearing.

‡ Πικροτης, or bitterness.

§ All these things are best expressed by negatives—It is the idea of the laws being equal to all—Not, as one of the ancients expressed it to a Legislator, that his laws would be like cobwebs, the small flies caught, but the large break through.

|| See Book I. Chap. III. and IV.

ARISTO-
CRACY, or
DEMO-
CRACY
absolute
take away
Civil privi-
leges.

MOCRACY, do all take away these things, is equally clear as we have been just proving—For what is the simple idea of them?—That there is Supreme power in each, equally unlimited, equally absolute, equally arbitrary,—And if there be this Supreme power in each, equally unlimited, equally absolute, equally arbitrary, what is to hinder them from doing what they please, there is no law to controul them, that is, the ORDER? Now let us keep a clear idea of this, the ORDER—There is no law to controul the ORDER (because there is Supreme power) therefore tyranny, in it—It can do what it pleases, whether it be MONARCHY, ARISTOCRACY, or DEMOCRACY.

Government
not in an in-
dividual, no-
thing.

But it may appear perhaps to some, that, because this Supreme power is not in an individual, the idea of tyranny is dissipated, and removed—But what is the idea of tyranny, or a tyrannous Government, in its simple and best sense? Is it not absolute, or uncontrouled Government, the uncontrouled Government of ONE PERSON? That PERSON acting upon other persons, according to his own will, without a balance from the will of any other!—Now take either MONARCHY, ARISTOCRACY, or DEMOCRACY, have not they all been proved to be ONE PERSON in the idea of sympathetic, and congenial ORDERS within themselves, never detaching themselves from the members of their own body?* And if they never do detach themselves from the members of their own body, are not they all to be considered as ONE PERSON, all in the sense of Government, as a single personage, or individual, contradistinguished and separated from the rest.

All tyranny. Another sense there is, of the word tyranny, and that is, not only absolute power, but an ill use of that power—Neither in this sense, will absolute MONARCHY, absolute ARISTOCRACY, or absolute DEMOCRACY, be further removed from the word tyranny—Power, always goes to abuse, from the corruption of human nature—Absolute uncontrouled

* See Chap. XXX.

power then, must be constantly tyranny in its best sense, and every thing but that, in its worst, from its liability to excess, and extrayagance—Liberty it cannot be, because that is security for Civil privileges, and positive ill usage it very often will be, from the natural tendency of man to transgress, and wander.

Let us take the exemplifications of absolute power in MONARCHY, ARISTOCRACY, or DEMOCRACY, are not they strictly to be considered, as ONE person? If it be MONARCHY, will not he lean to himself, if ARISTOCRACY, will not the rich to the rich, if DEMOCRACY, will not the poor to the poor? Is not that partiality, is not that human nature?—Will not they always more, or less favour their own set, can they do otherwise than feel a sympathy with, and act for it, and if they do, can they be other than ONE PERSON? Exemplifications.

But this is not all that they will do—They will sometimes come forth in active hostility against the rest, that is, the other Orders, and not only get the most power they can for themselves, but extend that power to injuring, or abolishing them.* Will not only favour their own set, but attack others.

Whether then we take tyranny in the sense of uncontrouled power, or uncontrouled power exercised to abuse, absolute, unbalanced Government, in any ORDER, is equally within the sense of it—The true meaning of tyranny, is, “absolute uncontrouled Government,” whether that Government be, of MONARCHY, ARISTOCRACY, or DEMOCRACY—There is no other rational sense of it, no other meaning, that is intelligible—Tyranny is either the possession, or abuse of power, and in a Legal sense, that is, the sense of Legal Government, the possible, is the actual, abuse of it—It does not signify then, whether a King, a Nobility, or a People, violate man’s privileges—Whether his safety be at the pleasure of a MONARCHY, an ARISTOCRACY, or a DEMOCRACY—

* See History of England when the Long Parliament, or DEMOCRACY abolished the House of Lords.

Three powers cannot be vested in ONE ORDER to make a balance.

In whose hands he is—To whose mercy he is abandoned—All is equally tyranny, all is equally uncontrouled power, all is equally, that which should not be; for the reasons given in this chapter, we may therefore conclude in the words with which we began, "That to make a balance, the three powers cannot be vested in ONE ORDER."

CHAP. XXXII.

THAT THE THREE POWERS CANNOT BE VESTED IN TWO ORDERS TO MAKE A BALANCE.

Two ways of vesting the powers in TWO ORDERS, *in integro*, and *partim*.

THERE are only two ways of vesting the powers in TWO ORDERS, and that is, *in integro* and *partim*—*In integro*, where each ORDER shall have an entire power, or powers separately, and *partim*, where they shall have parts of them jointly.

The latter of these modes would afford such endless complications, that it is impossible almost to consider it at all—What we may say of it in the meantime, applies equally to both, and that is, that neither of them would afford that balance, which is the basis of true Government.

In integro.

But it is proper to enter a little further into the subject—It is proper to examine the distributions *in integro*, for they really can be examined—This will let us into the nature of the powers, and enable us to observe their influence upon one another.

Whole combinations in *integro*, eighteen.

And here it is to be remarked that the whole combinations of the powers upon TWO of the ORDERS *in integro*, are eighteen. Figures will do that for us—In the first place, of the ORDERS themselves, there are three, KING, and NOBILITY, KING, and PEOPLE, and NOBI-

LITY, and PEOPLE*—Upon each of these, there are three combinations of the powers forwards, that is, giving two powers to the first named, and one to the last, and as many backwards, reversing this order, which makes six combinations of the powers, upon each combination of the **ORDERS**, of which, there are three, in all eighteen.

—Of these eighteen, there are only eight, that are at all practicable, ^{Ten impossible.} the People being totally unfit for the Executive, or Judicial functions, of which kind, that is, which throws these powers into their hands, there are ten—Indeed Nobility itself is not very well adapted for the Executive, on account of the promptitude it needs, requiring a single person, but even admitting it were, in that way, there would be only eight, in the other, four†—Taking then these eight as the only practicable, the others are to be thrown out of the question—If any one wishes to see this, they have an opportunity in the following table.

IMPRACTICABLE.**PRACTICABLE.**

Table.

KING AND NOBILITY.

2 to King King Legisl. Jud. Nob. Exec.

King Legisl. Exec. Nob. Jud.

King Jud. Exec. Nob. Legisl.

2 to Nobility Nob. Legisl. Jud. King Exec.

Nob. Legisl. Exec. King Jud.

Nob. Jud. Exec. King Legisl.

KING AND PEOPLE.

2 to King King Legisl. Jud. People Exec.

King Legisl. Exec. People Jud.

* The terms are now necessarily changed from **MONARCHY, ARISTOCRACY, and DEMOCRACY**, to **KING, NOBILITY, and PEOPLE**, because it is no longer a question of considering the spirit of the **ORDERS**, but giving power to the **ORDERS**.

† Counting the Practicable—There are six in all, which give the execution to the **NOBILITY**, but two of these are off already, by the people having Impracticable powers.

THE THREE POWERS CANNOT BE VESTED IN TWO ORDERS.

IMPRACTICABLE.

PRACTICABLE.

KING AND PEOPLE.

King. Jud. Exec. People Legisl.

2 to People People Legisl. Jud. King Exec.
 People Legisl. Exec. King Jud.
 People Jud. Exec. King Legisl.

NOBILITY AND PEOPLE.

2 to Nobility Nob. Legisl. Jud. People Exec.
 Nob. Legisl. Exec. People Jud.

Nob. Jud. Exec. People Legisl.

2 to People People Legisl. Jud. Nob. Exec.
 People Legisl. Exec. Nob. Jud.
 People Jud. Exec. Nob. Legisl.

How far
 eight that
 remain
 expedient—
 Orders inca-
 pable of ex-
 exercising their
 functions.

From this it appears that there are ten of these combinations purely speculative, because in ten, there are functions given to the People, which it is not only unfit for, but absolutely incapable of, exercising—Such are the Executive and Judicial, one of which, requires a promptitude, and the other, a disceptation and discernment of merits, of which the Many are totally incapable—Taking then the eight that remain, the question is, how far they are either good, or expedient—To begin with the first, King, Legislative, Judicial, Nobility, Executive—Here independent of the balance, we shall find that the ORDERS here named, are not properly qualified to exercise their functions—The King has the Legislative, and Judicial—One person, not to talk of the Judicial, cannot be supposed qualified for Legislation, which has generally been considered as the function of a greater number, from the necessity of a variety of views, and being sure of reaching all parts of the subject—Again, how can Nobility be properly Executive, which, from the promptitude it needs, ought to be the province of a single person—The next is King, Legislative, Executive, Nobility, Judicial—Still the King has a power that does not belong to him, though it is so far better, that Nobility is Judicial instead of Executive, and the King, vice versâ—

But still there are other reasons, which make Nobility not the best Judicial, from considerations of impartiality, and justice—The next is, King, Judicial, Executive, Nobility, Legislative—Here the Nobility may be composed of such men, as shall make good laws, and it may be a state wisely enough governed, setting the balance out of the question—The King may discharge tolerably well, the Judicial and Executive functions, having no strong interest to bias him, but then the laws must not be complicated, besides that the former of these requires more time, and attention, than Kings are apt to bestow—The next is Nobility Legislative, Judicial, King Executive—Here then are the same reasons in favour of the Legislative, and against it as before, and nearly the same against the Judicial, leaving the Executive in the middle—This may be a wise, but will be a corrupt, that is, a partial, and severe, Government—The fifth is Nobility Legislative, Executive, King Judicial—This will be less oppressive, but still in a great degree, arising from the partiality of the Nobles to their own ORDER, besides the inconvenience of slowness from the promptitude required in the Executive—The Judicial as remarked on before, that is, a King unfit, or at least, not very fit to exercise it—The sixth is Nobility Judicial, Executive, King Legislative—This will be tyranny in the one, and partiality, and slowness in the other—The seventh is, King Judicial, Executive, People Legislative—This will be the most precipitate of laws, the multitude being incapable of thought, or deliberation, judged on however and executed tolerably—However it might be managed within, and it would be managed very ill, it would be absolutely incapable of standing against foreign enemies, if, as would be the case, the Many had the dictation, or at least the sanctioning of public measures*—The eighth is Nobility, Judicial, Execu-

* See the reasons given by Polybius, why the Romans succeeded against the Carthaginians, viz. that the Senate managed all at Rome, the Multitude (at that time) at Carthage. See the passage, Ch. xxxiii. See also many other instances, the reverses of the Athenians in Sicily, owing to the Multitude, &c. &c. &c.

tive, People Legislative—This would be the same thing over again with a little more partiality, and slowness—Thus it appears, that all these powers independent of having no balance, being so distributed, would be absolutely ill administered, from the incapacity of the ORDERS to exercise them*.

Balance
great con-
sideration—
Deficient.

But the balance, is the most important consideration—It is there, as we observed, that the true foundation of Government lies, the right basis of all Legislation—And it is in this, that the above distributions appear more deficient if possible, than in the incapacity occasioned to exercise the powers† —King, for instance, Legislative, Judicial, Nobility Executive—In this there is no balance at all, making laws, and judging on, being incomparably greater than executing them, so that the Government would be totally tyrannical—Again, take King, Legislative, Executive, Nobility, Judicial, there would be still such a swing in favour of the King, from the powers of making laws, and executing them, that the Judicial would not be able to balance it, even with the most flagrant decisions (always however within the Constitution,‡) not to mention, that this power might be fettered further still, with Legislative restrictions—King Judicial, Executive, Nobility Legislative, is the next—Here almost the whole power is thrown on the side of Nobility, by allowing them to legislate, which they would do, for their own ORDER.§ We may be assured that

* It must be seen that there can be only eight Practicable, the six of King and Nobility, where the People don't enter, and the two Legislatures in the People, joined with King, or Nobility, the only time, that the former, that is, the People, have not either the Judicial, or Executive, of which, as has been said, they are incapable.

† As in case of the Multitude having the Legislative, where their very precipitancy occasions a swing, and destroys the balance.

‡ That is, not pretending to contradict a law, but pervert it.

§ It is to be observed here once for all, that when we talk of these Constitutions, and the balance arising from them, we suppose them executed—If not, they are no Constitutions at all, it is impossible to say what they are—It will depend entirely upon the Orders exercising the powers, how the balance will turn out—It may be said, for instance, that the Judicial, and Executive are strong against the Legislative, because they may refuse to judge and execute, or may judge, and execute contrary to, the laws—To this we answer, that they are then not the Judicial, and Executive,

the laws would take that direction, and Judging and Executing are but a poor balance, where Legislation as it always must be, and it has already been proved to be, is the soul and essence of the State, for the rest is only following out, and realizing†—The next is Nobility Legislative, Judicial, King, Executive—This would be oppressive in the highest degree—It would be giving the whole power to the Nobility, for the King would be little more than the minister to execute its commands—Nobility again Legislative, Executive, King, Judicial, makes the King only a Judge*—Nobility Judicial, Executive, King Legislative, throws the whole power almost to the King, as may be conceived from what has been said before—The remaining two are, King Judicial, Executive, with the People Legislative, and Nobility the same, either of which, besides making a precipitate Government, throws the power into the hands of the Many, so that all thoughts of a balance may be laid aside.

Thus it appears, that whether we consider the ability of the Orders to exercise the powers, or the balance occasioned by the distribution of them, the divisions between two Orders *in integro*, are equally bad—Ten are absolutely impossible, and eight are such, as no man would wish to see—Such, as are so defective in balance, that they cannot in any way produce that counterpoise, so indispensibly necessary in good Government—We must then betake ourselves to the modifications of the powers between TWO ORDERS, *partim*, *equally*.—And here we say that they are as ill calculated, and as ill fitted to the full, to obtain this counterpoise, as the other.

not being “In the Constitution”—The only way then of taking the thing, is to suppose, the Constitution executed, and then we know what we are about, and say as above—We shall extend this observation further.

† See Chap. XX.

* The Kings of Persia, administered justice in their own persons.

Innumera-
ble.

Common
PRINCI-
PLE.

Hostility of
ORDERS.
*Ad inter-
necionem.*

For in the first place, as we said, it is clear that these modifica-
tions, (*partim*) may be multiplied in infinitum, and in such a manner, as
to defy enumeration—But though it may be impossible to enumerate
them, yet it may be very practicable, to find a common PRIN-
CIPLE, which applies to both, and which will effectually determine
the question for us.

That common PRINCIPLE is the known, and perfect hostility
of the ORDERS to each other—Whatever two they be, which com-
pose a State, whether King, and Nobility, King, and People, or No-
bility, and People, they will invariably be inimical, and hostile—If
it be King, and Nobility, it will be, the King trying to put down the
Nobles, and the Nobles the King—The one canvassing with all his
power, weight, and influence, the other with patronage, and protec-
tion†—If it be King, and People, it will be ambition, and grasping of
power, against turbulence, and popular violence‡—If it be Nobility,
and People, it will be the same thing in another shape, it will be the
Nobles endeavouring to oppress on one hand, and the Many oppos-
ing them on the other, and the more so, that their leaders will in-
flame them further, by representing the former as tyrants.§

Hence it appears obvious, that wherever there are TWO ORDERS
in a State, these Orders will be hostile, and rival spirits, never satis-
fied till they accomplish each other's destruction—The testimony of his-
tory proves it—They will be for ever on the watch, and they will
be so intent to extirpate their enemy, that they will never hesitate
to do it, at the expence of ruining the State, as they will infallibly
find the opportunity.

Destroys
balance.

Whether this situation be a good one for the balance of a
State, cannot admit of much question—It will have the certain

† See Scotch History, as quoted here afterwards.

‡ See the examples of Messene, and Argos, as represented by Plutarch, also of Charles I. of
England.

§ See the Tribunes at Rome.

effect of keeping it in agitation, by the constant broils, and contentions it breeds, besides exposing it to perpetual revolutions.

But whether again, all possible modifications of the powers between two ORDERS *partim*, must of necessity leave this hostility, or whether the Governments we have seen are to be admitted as a proof of it, may yet be doubted—The modifications, as has been said, it is impossible to number—But we may examine those that have been, ^{In proportion as of} and if we either find that they were all of TWO producing hostility, or TWO, that in proportion, as they were of TWO, they did produce it, it will be sufficient to establish our premises.

CHAP. XXXIII.

THAT IN PROPORTION AS THE THREE POWERS HAVE BEEN VESTED IN TWO ORDERS, THEY HAVE BEEN DEFECTIVE IN BALANCE.

IN reviewing the early Governments of the world, we find little to excite our curiosity, or interest—In Asia, the Assyrian and Babylonian ^{Early Governments.} ASIA. empires, afford rather the pictures of tyranny, and Despotism, than any thing else, and the Persian Monarchy, is an instance to the same purpose—There the Sovereign was approached with almost divine honours, and never treated but with the most extravagant demonstrations of respect—In Africa, it was with few, and is now per-^{AFRICA.} haps, with no exceptions, not so much the elevation of the Monarch as the depression of the human race—There the people are not treated as such, but as mere tools, and play things, made for one man's sport,

AMERICA, and pleasure*—In antient times, America was not known, but as far as it is known, in the southern parts, we see nothing in the histories of Montezuma, or Atabaliba, to rescue them from the general character of Despotism—In the northern, the dependencies of the tribes are so loose, and so particularly appropriate to the purposes of war, as hardly to deserve the name of social union.

EUROPE. Europe still remains, and to Europe, attempts at Legal Government were confined in a great degree. But before we begin with this, we shall take notice of what have been esteemed more regular Governments in

Ægypt. Ægypt was the first of these—Over Ægypt a Monarchy extended—It was governed by a King, but subject to the customs of the country, in matters of Religion—If ever there was a country that respected its religious institutes, it was Ægypt, so that the Sovereign was perfectly regulated by them—In other respects, the Government was arbitrary,† indeed society had not then sufficiently advanced to admit of any competition of Orders.

Carthage. The next Government was Carthage—Carthage consisted of the Suffetes,‡ the Senate, and the People—The Suffetes were a kind of Kings, Consuls, or Dictators, with annual powers§—They were two in number, convoked the Senate, or Ζυγκλητος, || presided in it, told the voices, and commanded the armies—The Senate¶ was composed of persons the most distinguished for age, experience, birth, riches, and merit—They deliberated on affairs of State, declared peace, and war,

* King of Dahomey furnished his palace with human heads.

† The erection of the Pyramids was a pretty good proof of this.

‡ Derived from the word Sophetim, which in the Hebrew and Phenician languages, signifies Judges.

§ Ut Romæ, Consules, sic Carthagine, quotannis, annui bini reges creabantur. Corn. Nep. in vita Hannibalis.

¶ Senatum itaque Suffetes, quod velut Consulare imperium apud eos erat, vocaverunt. Liv. xxx. n. 7, called Ζυγκλητος by Polybius, as was also the hundred and four, now going to be mentioned, or Γεροσια.

¶ Probably six or seven hundred.

heard complaints from Provinces; admitted Ambassadors to audience, received letters from Generals; in short determined every thing, except where they were not unanimous, in which case, there was an Appeal to the People—From the Senate again, were chosen a Hundred and Four, the *ρεπισια*,† or Council of Old men, intended as a balance to the Suffetes, and Senate,‡ like the Ephori at Sparta, as also a Judicial, for trying their Generals at their return from war§—Lastly, from these Hundred and four, there were Five chosen, who had more authority than the rest, a Court of Review, who elected in on vacancies to the Hundred and four, and to themselves—It may be added that, when the Suffetes went out of office, they became Prætors, or Great Judges, || with the power of proposing and enacting new laws, and calling to account the receivers of the public revenues, which power Hannibal exercised in an extraordinary manner.¶

This was the Constitution of Carthage, and it may be known from it, that it was an Aristocracy—The Suffetes, and Senate were the Nobles, so were the Hundred and four, and if more were necessary, to these were added the Five, who chose in on vacancies, to the Hundred and four, and to themselves, without mentioning the Prætors or Great Judges, who were the Suffetes expired in Office—

An Aristocracy.

† Ann. Carth. 457, the same as the Hundred of Justin, see the following quotation—Dein. cum familia tanta Imperatorum (Imilco, Hanno, Gisco, Hannibal, Ischar, Sapho) gravis liberæ Civitati esset, omniaque ipsi agerent simul, et judicarent, CENTUM ex numero Senatorum, Judices deliguntur, qui reversis a bello ducibus, rationem rerum gestarum exigent, ut hoc metu in illo, imperia cogitarent, ut domi, judicia, legesque respicerent—Justin. lib. xix. 8.

‡ Carthaginienses—Oratores. ad pacem petendam mittunt triginta seniorum principes—Id erat sanctus apud illos concilium, maximeque ad ipsum senatum regendum vis. Liv. lib. xxvi. n. 51. lib. xxx. n. 16.

§ Ut hoc metu, as above, ita in bello, imperia cogitarent, ut domi judicia, legesque respicerent. Justin. lib. xix.

|| Cum Suffetes ad jus dicendum concédissent. Liv. l. xxxiv. n. 62.

¶ See Liv. lib. xxxiii. n. 46, and 47, where the whole story is told.

Thus it appears, that they were all Nobility, and even Aristotle censures the Government, on account of birth being made a requisite for Office—The People were totally excluded, for they had only a right to suffrage when the Senate were not unanimous, which the latter took care (at least, while the Constitution flourished) should never be the case—Hannibal carried a point upon the express ground, that it would be imprudent to allow it to come to the People,* and Polybius ascribes the ruin of the Republic to their mixing in affairs†—Aristotle too praises it during the time that they did not so mix, which shews that to exclude them was a point in the Constitution—Carthage then was chiefly a Government of ONE ORDER—It lasted 700 years.

Sparta.

The next Government (coming to Europe) is Sparta—Here the People had one degree more of power, for they possessed a regular voice, though no share in the discussions, or deliberations—They were obliged to receive, or reject the decrees absolutely‡—The Constitution was composed of Kings, Senate, and People§—The Kings were two, of the race of Hercules, and held the first rank in the State—Their authority was extremely limited in time of peace—In war, they had the command of the fleets and armies, but even then, they had Com-

* It was at the end of the second Punic war, when one of the Senators opposed the terms of peace offered by the Romans.

† Διὸ καὶ τὴν πλείστην δύναμιν ἐν τοῖς διαβελίαις παρὰ μὲν Καρχηδονίοις ὁ Δῆμος ἤδη μετεῖληφει παρὰ δὲ Ῥωμαίοις ἀκμήν εσχεν ἡ Συγκλητος—οὐδὲν παρ' οἷς μὲν τῶν πολλῶν βουλευομένων, παρ' οἷς δὲ τῶν ἀριστῶν, κατισχύει τὰ τῶν Ῥωμαίων διαβελία περὶ τὰς κοινὰς πράξεις—ἡ καὶ πταίσαντες τοῖς οἰοῖς, τῷ βουλευεσθαι καλῶς, τέλος πεκρατήσαι τῷ πολέμῳ τῶν Καρχηδονίων. Vol. iii. p. 72.

‡ Τῷ δὲ ΠΑΝΘΟΥΣ ἀθροισθέντος, εἰπεῖν μὲν ἔδενι γνῶμην τῶν ἄλλων υφείτο, τὴν δ' ὑπὸ τῶν ΓΕΡΟΝΤΩΝ, καὶ τῶν ΒΑΣΙΛΕΩΝ, προτεθείσαν ἐπικρίναι κύριος ἦν ὁ ΔΗΜΟΣ. Plut. in Lycurg. Ed. Tons. Vol. i. p. 93.

§ Φοίβεσθαι ἀκροσάντες Πύθωνος, οἱ τὰδε νικάων

Μαντείας τε Θεῶν, καὶ τέλειεν τ' ἔπειτα

Ἀρχεῖν μὲν Βελῆς, Θεοτιμητὲς ΒΑΣΙΛΕΑΣ

Οἱσι μέλει Σπάρτας ἡμεροῦσα πόλις

Πρόβυτας τε ΓΕΡΟΝΤΑΣ, ἔπειτα δὲ ΔΗΜΟΤΑΣ ἀνδράς

Εὐθείαις ῥήτραις ἀνταμειβόμενος. Ibid.

missioners, or Inspectors over them, who were chosen from persons obnoxious to them, to diminish their power still further—The Senate, or Γερυσία, had the deliberative power—We are told that they were added afterwards by Lycurgus as a balance betwixt the Kings and People, one while siding with the former, another with the latter, as each preponderated*—The People had the determining power, always however with the restriction above mentioned, of not discussing, or amending—This was a great fetter, for if you will not allow men to discuss, they have very little of the power, and none of the inclination, to consider things at all—And they accordingly seemed sensible of it, for they endeavoured to get rid of this restriction, under the reign of Theopompus, who however prevented them, by making a decree as often as they attempted it to dissolve them.† The Ephori were added afterwards to controul the power of Kings, and Senate, being chosen from the People‡—This was the Constitution of Sparta.

And from this it may be seen that Sparta too was an Aristocracy—An Aristocracy.

* Αἰρωμένη γὰρ ἡ πολιτεία καὶ ἀποκλινέσθαι νυν μὲν ὡς τὰς Βασιλεῖς ἐπὶ Τυραννίδι, νυν δὲ ὡς τὸ Πλῆθος, ἐπὶ Δημοκρατίᾳ, οἷον ἐρυμα τὴν τῶν Γεροντῶν ἀρχὴν ἐν μέσῳ θέμεν, καὶ ἰσορροπῆσαι, τὴν ἀσφαλεστάτην τάξιν εἶχε, καὶ καταστάσιν—Αἱ τῶν οὐκτώ καὶ εἰκοσὶ Γεροντῶν τοῖς μὲν Βασιλεῦσι προστιθεμένων, ὅσον ἀντιβῆναι πρὸς Δημοκρατίαν, αὐτοῖς δὲ ὑπερ τῆς μὴ γενέσθαι Τυραννίδος, τὸν Δῆμον ἀνερρουντῶν. Plut. in Lycurg. vol. i. p. 91. From which circumstance it avoided the confusions that had taken place at Messene and Argos as we are told by the same author. Ὁ καὶ μάλιστα τὴν Λυκεργῶ σοφίαν καὶ προνοίαν ἐποίησε φανεράν εἰς τὰς Μεσσηνίαν καὶ Ἀργεῖαν, συγγενῶν καὶ γειτονῶν Δημῶν, καὶ Βασιλέων στάσεις καὶ κκοπολιτείας ἀφορῶσιν· Οἱ τῶν ἰσῶν (with the Spartans) ἀπ' ἀρχῆς τετυχηκοτες, ἐν δὲ τῷ κληρῷ καὶ πλεον εἰς τεκνῶν δοξάντες, ἢ ἐπὶ πολὺν χρόνον ἐνδοξαμονοῦσαν, ἀλλ' ὕβρις τῶν Βασιλέων, ἐκ εὐπειθῆς δὲ τῶν Οὐχλῶν, τὰ καθεστῶτα συνταραξάντες, ἰδεῖν οὐκ ἔβουλον ἢ ὡς ἀληθῶς εὐτυχημα τοῖς Σπαρτιάταις, οὐ τὴν πολιτείαν ἀρμολαμένους, καὶ κερσας παρ αὐτοῖς. Ibid. p. 94.

† Αἱ δὲ σχολίαν ὁ ΔΑΜΟΣ ἐροῖτο, τὰς ΠΡΕΣΒΥΤΕΝΕΑΣ καὶ ΑΡΧΑΓΕΤΑΣ ἀποστὰς εἶμεν. Plut. Ibid. p. 93.

‡ Οὕτω τὸ πολιτεῖμα τὸ Λυκεργῶ μίξαντος, ὥς ἀκρατὸν τὴν Ολιγαρχίαν, καὶ ἰσχυρὰν οἱ μετ' αὐτὸν ὀρνῶντες ἐπαργῶσαν καὶ θυμωμένην, ὡς φησὶν ὁ Πλάτων, οἷον ψαλίον ἐμβάλλουσιν αὐτῇ, τὴν τῶν Ἐφερων δύναμιν.—Plut. vol. i. p. 93. as before.

§ Τρίτον παρὰ Λακεδαιμονίοις οἱ ΒΑΣΙΛΕΙΣ αἰδῶν ἔχουσι τὴν ἀρχὴν, οἱ δὲ προσαγορευόμενοι ΓΕΡΟΝΤΕΣ διαβῶν, καὶ μεθ' ὧν, πάντα χειρίζεται τὰ κατὰ τὴν πολιτείαν. Polyb. vol. iii.

The authority of the Kings was but limited, besides, whatever they had was included in the Senate, for if they had been opposing one another, the Ephori would never have been added to controul them—They were moreover both considered as one, for when the Senate is named, it is said to consist of thirty, whereas it was only of twenty-eight, when the Kings were not counted—The People were totally excluded—Though the Ephori were chosen from among them, this only diminished the power of the Kings, and Senate, without increasing theirs, for they were kept under by wanting the power of discussion—They might have rejected the decrees, to be sure, but this was but a barren power, and not apt to be exercised, when we consider the superior advantages of modelling, contriving, embarrassing, and returning eternally the same upon them, aided by better abilities with more enlightened education—Polybius therefore, with all deference to so great an author, may be surely said to be wrong when he calls Sparta a Government of THREE ORDERS, which he plainly does, when he boasts of the men of his day having experienced the advantages of such, and gives this very Government as an example of it.*

And indeed it was an Aristocracy in the very beginning, at least as far as Lycurgus had to do with it—We are told that when he returned home, being elevated with the Oracles delivered in his favour, he brought the Nobles into his views, and established his Republic by coercion†—This then, is a pretty good hint, both to those who expect that Governments should be pure in their beginnings, and that every Republic that bears the name of equality, should be free, that is properly so—Sparta was the very picture of equality,

* Διλον γαρ, ως αριστην μιν ηγητεον πολιτειαν την εκ ΠΑΝΤΩΝ ΤΩΝ ΠΡΟΕΙΡΗΜΗΝΩΝ (ΕΙΔΩΝ) συνεστωσαν, τετα γαρ τε μερως, ε λογω μονον, αλλ, εξω, πειραν ειληφαμεν, Λυκεργος συστησαςτος πρωτε κατὰ τετον τον τροπον, το Λακεδαιμονιων πολιτευμα. Pol. Vol. iii. p. 4. Viudob. ed.

† Επαρβεις δε τετοις προσηγε της ΑΡΙΣΤΟΤΕΛΕΩΣ—Plut. Vol. i. p. 91.

and yet it was an Aristocracy*—But freedom in antient times, very often meant only being *Αυτονομοι*, or independent, that is, not governed by other nations, no matter how much tyranny within—Sparta lasted 700 years.†

The next Government is Athens, and that indeed was of a very Athens. different nature—It consisted of the Archons, the Senates, and the People—The Archons, ten in number, came in place of their Kings, and corresponded to those of Sparta, but with far inferior authority to both—They were originally instituted for life, afterwards for ten years, and in Solon's time, for one only—Two or three of them, were judges, and the rest had municipal functions, such as the care of the police, the charge of seeing the laws executed, supplying the city with provisions, and others of the like nature—They were chosen by lot, and from the People.—The Senate were all chosen in the same way (annually)—It was their business to prepare, and digest matters before they were brought before the People, being instituted for this purpose by Solon, that nothing crude or immature, might come to such a precipitate multitude—This was called a *προβουλευμα*, or preparatory resolution, and if it was approved, it passed into a law, if not, it had only force for a year‡—In the Assemblies of the People, “all the great affairs of the Republic were discussed—It was there, that new laws were proposed, and old amended; the religion, and worship of the Gods examined—Magistrates, generals, and officers created, their behaviour, and conduct enquired into, peace, or war concluded; deputies and ambassadors appointed; treaties, and

* It is said that Lycurgus returning from a journey, and observing the perfect equality of the reaped corn, as he passed through Laconia, remarked to those that were with him, smiling, Does not Laconia look like the possession of several brothers, who have just been dividing their inheritance among them?

† It may be remarked, that the very passing of the decree of Theopompus, to dissolve the People as often as they attempted discussion, see p. 103, is a proof how little power they had.

‡ It was upon this that Anacharsis observed to Solon, “I wonder you should empower the wise men only to deliberate, and debate upon affairs, and leave the determination, and decision of them wholly to fools.”

“alliances ratified; freedom of the city granted, rewards and
 “honours decreed for those who had distinguished themselves in war,
 “and rendered great services to the Republic, and punishments or-
 “dained for those who had behaved themselves ill, or had violated
 “the laws of the State, and were banished by ostracism—In fine,
 “justice was administered, and judgment passed there upon the
 “most important affairs,* on all, except what related to the Areopagus,
 “who had a high jurisdiction in criminal cases, and the supreme
 “superintendence of Religion, Morals, and Manners.† They interfer-
 “ed too occasionally in affairs of Government.”‡

Democracy. This was the Constitution of Athens, and from this it may be
 seen, that it was a strong Democracy§—Take away the Areopagus,
 and the People had the whole Legislative, Judicial, and Exe-
 cutive, in their hands They took measures,—made laws, and
 tried causes—It may be said indeed, that if the Senate could not
 determine without them, they could not originate without the
 Senate, but this related chiefly to minor laws, and even in these,
 the rule was not rigidly adhered to—There were for instance,
 many laws or amendments of laws, proposed of which the Senate
 heard nothing, as for instance, the famous alteration of Demosthenes
 to alienate the theatrical Monies given to the People for public en-
 tertainment, and apply them to the war against Philip—In taking

* See Rollin's Ancient History, English translation, Vol. iii. p. 523. Oct. Ed.

† They condemned a child to death for making it its pastime to put out the eyes of quails.

‡ Quamvis Themistocles jure laudetur, et sit ejus nomen, quam Solonis, illustrius, citeturque Sala-
 mis clarissimæ testis victoriæ, quæ anteponatur consilio Solonis ei, quo primum constituit Areo-
 pagitas: non minus præclarum hoc, quam illud, judicandum est. Illud enim semel profuit, hoc
 semper proderit Civitati: hoc consilio leges Atheniensium, hoc majorum instituta servantur—Et
 Themistocles quidem nihil dixerit, in quo ipse Areopagum juverit: at ille adjuvit Themistoclem
 —Est enim bellum gestum consilio Senatus ejus, qui a Solone erat constitutus. Offic. I. i. n. 75.

§ It is remarkable, that in characterizing the different nations, who went to the siege of Troy, the
 Athenians are the only one, whom Homer calls ΔΗΜΟΣ, or PEOPLE, no doubt alluding to
 their popular Government. See Aristotle, also de Rep. lib. ii. c. 12. Ἐκαστος τῶν Δημαγωγῶν προηγάγεν,
 αὐξάνει τὴν οὖν ΔΗΜΟΚΡΑΤΙΑΝ.

measures, they were supreme, witness the decrees concerning the Mytylenians, whom they condemned, and saved almost in the same day;* and as to law suits, if any one wishes to know he length, they went in deciding them, both in power and inclination, they may learn it from Aristophanes, who describes a man as making his way through the tiles of a house, to get to the public assembly, and give his vote, he having been confined by his friends on account of his inordinate passion for trying causes†—These things shew what the Assemblies of the Athenians were.

But the discussion was the great thing—When we consider how much even the smallest power is reinforced by a numerous Assembly, we may conceive what the whole LEGISLATIVE, JUDICIAL, and EXECUTIVE must have been, in the hands of near twenty thousand people, roused by the agitation of their Orators—The swell was immense—It was so great, that it became a particular art, to know how to animate them

Ἡστραπτεν ἔβροντα συνεκυκα την Ελλάδα,

as was said of Pericles by Aristophanes—And they did rouse and did animate them in such a manner, that nothing could oppose it—It was in vain therefore that Solon flattered himself that having fixed the State as it were, upon two Anchors, the upper and under Councils, it would be less liable to disturbance, and fluctuation.‡ The People would have torn up fifty such Anchors—It is curious too to observe, that as the Ephori were added afterwards to controul the Aristocracy of Sparta “οἷως κικρατον εἰς την Ολιγαρχίαν, καὶ ἰσχυραν, οἱ μετ’ αὐτον (Λυκεργον) ὀρωντες σπαργωσαν, καὶ

* See Thucydid. lib. iii.

† See Aristophanes, Σφηκες.

‡ Συστῆσαι μὲν δε την εν Αρείῳ παγῇ ΒΟΥΛΗΝ εκ των κατ’ ἐνιαυτον Αρχοντων ης δια το Αρχει (having been Archon) καὶ αὐτος μετεχεν εἰς δ’ ὄρων τον ΔΗΜΟΝ οἰδεντα καὶ θρασυνομενον τη των χρεων αφεσει, δευτεραν προσκατενειμε ΒΟΥΛΗΝ απο φυλης εκαστης, τετταρων ουσων, εκατον ανδρας, επιλεξαμενος ης προβουλευειν εταξε τη ΔΗΜΟΥ, καὶ μηδεν εἰς αν αποβουλευτον εἰς εκκλησιαν εἰσφερεσθαι, την δ’ ανω ΒΟΥΛΗΝ επισκοποι παντων, καὶ φυλακα των νομων εκαθισεν οιομενος εἰς δυσι ΒΟΥΛΑΙΣ ωσπερ αγκυρας ορμισαν ητιον εν σαλει την πολιν εσεσθαι, καὶ πολλον ατρεμεντα τον ΔΗΜΟΝ παρεχειν. Plut. in vit. Sol. vol. i. p. 191:

θμυεμένην," see our 103d page, so were the Senate interposed at Athens to bridle the licentiousness of the Democracy "ετι δ' ὅρων
 "(Σολων) τον ΔΗΜΟΝ οιδεντα και θρασυνομηνον τη των χρεων αφεσι",—yet the two Governments followed the bent of their own genius—Nor was Solon very sanguine in his expectations of any total change, that he should work in the dispositions of the Athenians—Being asked afterwards, if the laws which he had made for the Athenians were the best, he replied, "The best they were capable of receiving."*

Such were the Governments of Carthage, Sparta, and Athens, and being such, one remark applies to them-all, viz. That they were chiefly of ONE ORDER.—They were not certainly of THREE.—The power, standing, and authority of the Suffetes, Kings, and Archons, puts a total end to that.—They were more of TWO, because power was more divided between TWO.—But they were most of all of ONE ORDER, as ONE had the principal direction of affairs, and are therefore, to be classed with Governments of that description.—Sparta was a strong Aristocracy, even an Oligarchy, we have the authority of Plutarch for that, "Ὁμως ετι ακρατον την Ολιγαρχιαν, &c." as we have it in the quotation above cited.—And Carthage was an Oligarchy, strong enough too, when Hannibal himself one of the Nobles, found it necessary to reform the Hundred and four or Γερυσια,† by making them

* Ὁν αν, εφη, προσεδιξαντο αριστους. Plut. in vit. Sol. Vol. i. p. 189, Quart. Ed. though at the same time he did say,

ΔΗΜΟ, μεν γαρ εδωκα τωσον κρατος οσον επαρκει,
 Τιμης υτ' αφελων υτ' επορεξαμενος.
 Οι δ' ειχον δυναμιν, και χρημασιν ησαν ΑΓΗΤΟΙ,
 Και τοις εφρασαμην μηδεν αιεικεις εχειν.
 Εστην δ' αμφιβαλων κρατερον σκακος αμφοτεροισι.
 Νικαν δ' εκ εισ' ΟΥΔΕΤΕΡΟΥΣ αδικως.

† They are called 104, and 100 indiscriminately by Authors.

annual, instead of perpetual, which he did at the end of the second Punic war. Athens was a Democracy, even an Ochlocracy sometimes*—We see then, that in all these Governments, there was a Nobility, a Multitude, and Ambitious individuals—In some, the Nobility got the better, in others, the Multitude, and in all, there were Ambitious citizens, who every now and then disturbed the public tranquillity, not to mention the earlier Tyrants of Greece, who owed their power to these usurpations†—Our system then of there being Three INTERESTS or ORDERS in every State, either apparent or concealed, of a ONE who would be GREATEST of all, a FEW who would be GREATER than the rest, and a MANY, who would have things their own way, receives confirmation on every side, but of this only in passing.‡ These Governments then were all of ONE, or chiefly of ONE ORDER—Others there were in Greece, which imitated their example in being also actually of ONE, with a Biform, and sometimes Triform appearance.§ Such were Corinth and Thebes, the former of an Aristocratic, the latter of a Democratic nature || —But these were the principal—We now come to Governments of another kind, such as were not only of

* See Arist. and Polyb., Aristotle quoted in Ch. XXXIV. and Polybius as follows “ Διο και περι των ταυτης τε (των Αθηναίων) και της Θηβαιων, υδεν δει πλειον λεγειν, εν αις ο ΟΧΛΟΣ χειριζει τα ΟΛΑ κατα την ιδιαν οριαν” ο μιν οξύτητι και πικρία διαφέρων, ο δε εις και θυμω συμπεπαιδευμενος. Pol. vol. iii. p. 63. Oct. Ed.

† See Pisistratus, &c.

‡ See Chap. XXI.

§ It is to be observed before we leave these Governments, that in all, the persons who were created to restrain power acquired *for themselves*—The Γερουσια (at Carthage) were obliged to be reformed by Hannibal, the Ephori at Sparta imprisoned Pausanias, one of their Kings, without raising the People, and the Senate sided with the Areopagus at Athens, though chosen from the People—But this does not shew that men *leave* their ORDERS, but only the strength of power in *creating* new ORDERS. See on this, note, Ch. XXX. p. 83.

|| Αι δε (Κορινθιοι) μη δυναμενοι ζην εν τη ΔΗΜΟΚΡΑΤΙΑ, και προς ΔΥΝΑΣΤΑΣ αποβλεπειν, ειςθοτες, contrary to Athenians says Plut in vit. Timol. p. 108. For Thebans, see last quotation.

TWO or THREE forms in outward and external appearance, but actually of TWO in reality.

Govern-
ments of
TWO OR-
DERS.
Rome—
Consuls.

The first of these was Rome. Rome as we all know consisted of Consuls, Senate, and People—The Consuls “convoked the Senate, and “People, and while in Rome, had all the Magistracies subject to “them, except the Tribunes—They introduced ambassadors into the “Senate, proposed decrees to them, and to the People, and laid before “the former, the most pressing affairs—They received from the Quæs- “tors what money they wanted, and had supreme authority in the “Camp—They levied troops, and had power of life, and death over “the soldiers—They executed also the decrees of the Senate.”

Senate.

The Senate again were “masters of the Treasury, except in as “far as regarded the demands of the Consuls—They appointed Com- “missioners from their number, to try great offences, such as trea- “sons, conspiracies, poisonings, and assassinations—They made trea- “ties with cities, called them to account for their conduct, succour- “ed, guarded, and garrisoned them—Had laws proposed in their sit- “tings—Sent embassies to nations, exhorting to alliance, or im- “posing commands on them—Received ambassadors, and answered “them—Declared peace, and war.”

People.

The People “were the distributors of reward and punishment, “especially in the great offices of the state—Judged in matters of “life, and death—Conferred Magistracies—Sanctioned laws—De- “termined peace, and war—Confirmed treaties, and alliances.”

Consuls re-
spected Se-
nate and
People.

Therefore says Polybius, the Government consisted of THREE OR- DERS*—Therefore we must beg leave to say, with all deference to so great an author, it did no such thing, at least substantially, and really—The Consuls, says he, respected the Senate, on account of the supplies for

* See p. 225. Οτι ἀριστη πολιτεία ἡ ἐκ ΠΑΝΤΩΝ ΤΩΝ ΕἶΔΩΝ συνειστώσα, καὶ οὕτως τῶν Ῥωμαίων ἐστὶ τῶσαυτη.

their army, which the latter could either give or refuse, so as to promote, or disappoint their enterprizes—They stood in awe of them too, on account of their triumphs, which the Senate could either withhold, or grant. The same Consuls regarded the People, because they alone could confirm the treaties which they made, and because they were obliged to account to them on laying down their power—The Senate again respected the People, because they could not bring any of the trials for great offences to a conclusion without their assistance—Because all laws tending to diminish the authority, estimation, or dignity of the Senate, were in their power—Lastly, because the Tribunes, who were obliged to follow the inclinations of the People, could by their opposition, if it was even but of one of them, stop any of the Senate's laws—The People again were obliged to respect the Senate, on account of the numerous contracts for public works, in which they were all engaged, either as principals, partners, securities, or money-lenders, on which Judges were appointed by, and from the Senate, who in unfortunate cases, might either enforce performance, or spare—They were also obliged to fear the Consuls, under whose absolute authority they were forced to be, while in Camp.*

But surely, this system may be said to fall to the ground, when we come to examine it a little further—For what was the power of the Consuls? They introduced ambassadors to the Senate—Convoked it, we'll say—Proposed decrees to them and to the People—Laid the most urgent affairs before the former—All this was but an empty power—It was neither LEGISLATIVE, JUDICIAL, nor

* It is remarkable that among all these respects, it is not mentioned that the Senate respected the Consuls—The Consuls feared the Senate and the People—The People, the Senate, and the Consuls, but the Senate feared only the People—What was the reason that they did not fear the Consuls? They swallowed up the Consuls as we shall soon see.

EXECUTIVE, or hardly so (for they did execute the decrees of the Senate)—The chief real power they had, was demanding money from the Quæstors, (and even this if they had done it to an immoderate degree, they would have been obliged to account for) with the command of the Magistracies while at Rome (all except the Tribunes too) which were chiefly matters of police—The real LEGISLATIVE, JUDICIAL, and EXECUTIVE were in the Senate and People, for as to the command of the armies, that or any thing relating to it, was only acting as Generalissimos, and discharging their functions to the State—And that the real LEGISLATIVE, JUDICIAL, and EXECUTIVE were in the Senate, and People, we may easily see by the following state, in which we shall take the THREE POWERS, as mentioned by Polybius himself, and carry them down just as he has stated them.

NOBILITY.

SENATE

LEGIS-

Laws proposed, alliances, and treaties contracted, embassies sent, and answered, succours decreed, censures on nations imposed, peace, and war declared by.

JUDI-

Treasons, conspiracies, poisonings, assassinations, delinquency in great offices, taken cognizance of by.

EXE-

CONSULS.

Laws executed, levies made, succours carried out, war conducted by.

PEOPLE.

PEOPLE.

LATIVE.

Laws sanctioned, alliances and treaties ratified, peace and war determined, rewards and punishments decreed by.

CIAL.

Finally pronounced on, and sentence of life and death passed by.

CUTIVE.

Consulship, and other commands and offices conferred by.*

From this we may see that the THREE POWERS were substantially divided between Senate, and People†, and consequently between Nobility and People,‡ as clearly as the division can make them, laid down by

* Qui facit per alium, facit per se, therefore though the magistrates elected to these offices did apparently the Executive duty, yet those who chose them had the power.

† The Consuls had nothing—Count the reciprocal holds, that the whole three bodies had upon one another—The People had five, the Senate three, and the Consuls only one—The People held Approbation of treaties, and Judgment over the heads of the Consuls, Conclusion of trials, laws for diminishing the Senate's authority, and all laws, over the Senate—The Senate held the Granting of supplies, and Triumphs over the Consuls, and Judgments in Contracts over the People—The Consuls held only Power over the People while in Camp, which was neither LEGISLATIVE, JUDICIAL nor EXECUTIVE, as it were, it was only the power of a Generalissimo in an army.

‡ We are well aware, that one of the Consuls was a Plebeian, but he was carried away by the spirit of power, which he had not distinct, but reflected from the Senate—Even if he had not been so carried away, he could not have been detached from the Senate—They were both therefore to be considered as ONE ORDER—Or granting that they had split, would not the one have joined the Plebeians, and the other the Patricians, so that still it is the TWO ORDERS, and a proof that, split them as you will, the spirit still remains, "*Inventus semper disjecti membra Poeta.*"

Polybius*—Now look to the consequences—Were not these ORDERS engaged in constant contention? Do we hear of any thing else in the whole Roman history, than the battles between the Patricians and Plebeians? They were constantly employed in opposing one another, with the most implacable, and virulent hostility, and never agreed but in one thing, which was oppressing all mankind.

Now does this prove our premises, or not? Does this shew, that TWO ORDERS must always look upon one another with animosity, and keep a State in hot water, and contention? Will any one say, that this was not hostility, or maintain, that the Roman State consisted of more than TWO ORDERS? If ORDER mean any thing, it means a separate interest—A separate set of connexions—How then, could the Consuls be reckoned such, when they were so intimately linked with the Senate, when they had no distinct authority, nor standing, nor what is more than all the rest put together, divided interest from the Senate†—What was the power of demanding money from the Quæstors (liable too to controul) of superintending the police, with that of presiding in, and convoking the assemblies of the People, and Senate, and introducing ambassadors into the latter? A mere nothing, a mere cypher, compared with the LEGISLATIVE JUDICIAL, and EXECUTIVE powers.

Polybius therefore, with all deference, may surely be said to be wrong,

* If we want more proof on the subject, we may refer to their standards, S. P. Q. R., SENATUS, POPULUS QUIRITES ROMANUS—What did that say?

† It is to be observed once for all, that the idea of ORDER, is a compound one, consisting of *authority, standing and connexion*, making a different Interest, see p. 86.—Men in power however draw to men in power—That was the very thing with the Consuls—But this does not shew that men leave their ORDER, but only that power creates new ORDERS—To shew it in one point of view—If some of the People were taken into power along with Nobility, they would in a certain time become of the interest of the Nobility, as was shewn by the Βασις (Senate) at Athens, and Ephori at Sparta, who, though chosen from the People, left the People, but this, as remarked on before, not *leaving* their ORDERS, but *changing* their ORDERS. If any one doubt still that the Consuls were Patricians why did Coriolanus say, that “being a PATRICIAN, he ought only to be judged by the Consuls?”

when he calls the Government of Rome, of THREE ORDERS, and says, that no one looking at it, could tell, whether it was most Monarchical, Aristocratical, or Democratical*—They could tell at least, that it was not of the whole THREE ORDERS, not of the whole THREE substantially, and really, but Two Orders and TWO ORDERS, only.†

Such was the State of Rome, and such the exemplification of the contests between Nobility and People—Other examples there may be, but this we will venture to say, was the most prominent, and principal—Others there may be, which present these conflicts according as the circumstances of the times, or the still more varying shades of Government, have given them an opportunity of appearing—But this is that, which exhibits them in the most constant and steady manner, during a period of almost seven hundred years, without interruption, or variation.

The next exemplification is King and Nobility—This, if new in ^{KING and NOBILITY} the appearances it presents, is equally novel in the cause that produced them—That cause was the Feodal system—The Roman Empire, that empire of which we have been just speaking, had extended over the civilized part of the world, and swallowed up all other Governments—It was now crumbling to pieces, but still in these pieces, might be discerned the master features of Despotism—A new order of things, was now destined to arise, an order, which should sweep away these Governments from the globe, and place in their

* Ποτε μηδενα ποτ' αν ειπειν δυνασθαι Γελοιως, μηδε των εγχωριων, ποτεῖ ΑΡΙΣΤΟΚΡΑΤΙΚΟΝ το πολιτευμα σκεπταν, η ΔΗΜΟΚΡΑΤΙΚΟΝ, η ΜΟΝΑΡΧΙΚΟΝ, Pol. vol. i.

† We need not quote Cicero again here, see p. 86, nor Tacitus again here, see *ibid*, nor refer to their standards for Government, but just conclude the whole, with observing, that the Two PARTIES were called OPTIMATES and POPULARES. Further, let not the incautious reader think, that any little errors such as these, are a detraction from the memory of this great author—No—It was a greater merit, greater far, greater, how incalculably, in the state the world then was, to do what he did, than it can now be, to detect any little mistakes in him—And any objections raised against him on this ground, are best answered in his own words, which imply that you are to judge an Author, not by what he has *failed* in, but what he has *done*, an observation in which, there is not more candour than Justice! Ουκ εκ των παραλειπόμενων.

room those of another nature and species—Immense swarms of Barbarians, issuing from the North, unable either to content, or subsist themselves in the barren regions they inhabited, poured upon Europe, and overwhelmed it—Overturning every Government, where they came, they substituted in its room, such as bore the masculine features of its authors—These authors were free, that is, independent of their leader, or chieftain—They followed him, as voluntary companions, not served as mercenary soldiers—They divided with him the countries they conquered, and held them from him by no other tenure, than military service—That is, they were obliged to follow him to the field, and appear in arms at his signal, to defend their common territories—Possessions acquired in this way, were likely to be independent—To interfere with them on the part of the Sovereign, would have been meddling beyond his right, because that right was only military service—They became therefore separate Jurisdictions—The Proprietor had a right to coin money in them, to administer Justice, civil, and criminal, and to carry on war against his private enemies in his own name—These Proprietors then were so many Sovereigns—The Lord paramount, or King, had the general Sovereignty of the whole, but they the particular, with the LEGISLATIVE, JUDICIAL, and EXECUTIVE Powers.*

It could not be expected, that a system so formed, would remain long tranquil, and pacific—For the purposes of war, (and here it resembled the Roman) it was perfect, but for all others variable, and hostile—It was natural, that the Prince should be jealous of the Nobles, and the Nobles jealous of him—That he should consider them as dangerous Rivals, and they him, as a troublesome Lord—It was natural too, that these jealousies should break out, and in many cases, bring them to open violence—Accordingly, we find in these periods, the King, and the Nobles engaged in constant contentions. The power of the

* Germany afforded an exact picture of this till 1805-1806.

latter so great, that in many cases, the Sovereign was unable to subdue it—Witness the contest between James II. of Scotland, and the Earl of Douglas, when the latter for a considerable time, defied his efforts—This was the state of Europe at the period we talk of—“The Monarchical and Aristocratical parts of the Constitution (to use the words of Robertson) having NO INTERMEDIATE POWER “to balance them, were perpetually at variance, and jostling with each “other.”*

Such, then, being the state of Europe, and such the consequences produced by it, we are at no loss, to judge of the combination between King, and Nobility—It affords complete exemplification—On the one side, attack and aggression, on the other, repulsion, and resistance—No order, no balance, no solidity, safety, or interior regulation—All vehement, and implacable hostility, equally virulent, equally inflexible, equally unappeasable with any of the others, only exemplified in a different manner.

The third and last combination is King, and People. Of this, we have KING and PEOPLE. fewer instances, than of either of the former, but still sufficient to establish our premises—In antient times, different nations have found themselves in this situation, in proportion as the vicissitudes of their Governments, inclined them to it—Of any so constituted originally, and directly, we have few examples—We are told by Plutarch that Messene, and Argos, were founded in this way, and we learn the consequences resulting from it*—Through the haughty arrogance of their King, and the turbulent contumacy of the People, they were thrown into constant convulsions. We learn also, that Sparta was so con-

* See Robertson's History of Ch. V. vol. i. p. 17.

* Ο και μαλιστα την Λυκεργην σοφίαν, και προνοίαν επόησε Φαιστραν, εις τας Μεσσηνίων και Αργείων, συγγενών και γειτονών ΔΗΜΩΝ, και ΒΑΣΙΔΕΩΝ, στάσεις, και κακοπολίτειας, αφορμασιν. Οι των Ισών (with the Spartans) αρχής τετυχηκότες, εν δε τω κληρώ, και πλέον εχειν εκείνων δοξάντες, εκ επι πολυν χρόνον ευδαιμόνησαν, αλλ υβρι τω, ΒΑΣΙΛΕΩΝ, εκευπειθεία δε των ΟΧΛΩΝ, τα καθεστῶτα συνταραζάντες, εδειξαν οτι θείοι, ην ως αληθως ευτυχημα τοις Σπαρτιαταις, ο την πολιτείαν αρμοσάμενος, και κερασας παρ' αυτοις. Plut. in Lyc. Vol. i. p. 94.

stituted originally, and corresponded in it's confusions, by Lycurgus having added the Old men (η καταστασις των Γεροντων) to balance between Kings and People*. In our own times, we have the examples of Charles I. of England, and Louis XVI. of France, the one left with the long Parliament, after the Lords were abolished, and the other with the National Assembly, or Convention, each of which brought a King to the scaffold†—These are the principal instances—But in all we recognize two things, first the evils of the combination while it lasts, and secondly, that it cannot last long, unless there be some extraordinary power to reinforce the ORDER of KING (but this in passing) from the immense swing of the PEOPLE.

In all, a want of Balance in proportion as of TWO ORDERS.

Such are the combinations of TWO ORDERS, and such the consequences resulting from it—In all we may observe a want of Balance, in all, a defect of Order, solidity, and peace, of Nice and constant adjustment—If it be KING, and NOBILITY, they fight, if it be KING, and PEOPLE, they convulse, if it be NOBILITY, and PEOPLE, they are engaged in constant contention—And we may observe too, in proportion, as the combinations have been of TWO, these consequences arising—If entirely of TWO, entirely, if partly, partly, but in all, a want of balance, more or less, according as they were composed of TWO—Thus then, without enumerating either the Governments of TWO ORDERS that have existed, or the possible modifications that can exist of them we may assert, (for now the fact

* Λιωρημενη γαρ η πολιτεια και αποκλινουσα νυν μεν ως τις ΒΑΣΙΛΕΙΣ, επι Τυραννίδα, νυν δε ως το ΠΛΗΘΟΣ, επι Δημοκρατιαν, οιον ερμηα, την των Γεροντων αρχην εν μεση θεμενη, και ισορροπησασα, την ασφαλεστατην ταξιν εσχε και καταστασιν—Λει των οκτω και εικοσι Γεροντων, τοις μεν ΒΑΣΙΛΕΥΕΙ προστιθεμενων, οιον αντιδηναι προς Δημοκρατιαν, αυτες δε υπερ τε μη γενεσθαι Τυραννίδα, τον ΔΗΜΟΝ αναγγωννυντων. Plat. ib:d. p. 91

† This shews the energy of the cause, when it produced exactly the same effect in TWO different countries, notwithstanding the disparity of times, circumstances, and national character. It further reinforces completely the remark made in our thirty-second Chapter, see p. 98, that wherever there are TWO ORDERS in a State, these ORDERS will be hostile and rival spirits never satisfied till they accomplish each other's destruction.

bears us out) that Governments have been always defective in Balance, in proportion as the powers have been vested in TWO ORDERS.

CHAP. XXXIV.

THAT THE THREE POWERS MUST BE VESTED IN THREE ORDERS TO
MAKE A BALANCE.

WE have now seen, that the three powers cannot be vested in ONE ORDER, to make a balance—We have also seen, that they cannot be vested in TWO ORDERS for that purpose—The only result seems to be, (for there are no more) that they must be vested in Three Orders. Three powers must be vested in THREE ORDERS, to make a Balance.

But this is not satisfactory—It is not satisfactory to a reasoning mind, to be cut off with short results, and negative demonstrations—It demands something more—It requires positive evidence of the existence of the thing, and absolute, and as far as possible, complete proof on the subject.

That proof, we hope, we have—We flatter ourselves that we have complete evidence arising from the thing itself, from its intrinsic nature, and essence, that the three powers ought to be, and indeed cannot otherwise than be, vested in THREE ORDERS, to obtain a balance. Hope proof.

For what is a Balance, as understood in Government? “A nice, What a Balance? and proper adjustment of forces, fixed in such a way, as to maintain a constant, and unvarying, generally unvarying, equilibrium”—That is a Balance—For as to merely equivalent forces, forces of generally equal strength, of which, one is getting the better one day, and another, another, that is as far removed from the idea of any Balance as

can be, the most absolute and decided; Monarchy, Aristocracy, or Democracy.

How to get it. And if this be our idea of a Balance, how are we to get it? It is not clearly, by placing the powers in ONE ORDER, in either KING, NOBILITY, or PEOPLE, because that would be carrying every thing one way. It would be no Balance, let them be divided into as many bodies as they would†—They would be still the same Interest—There must then be a force to oppose them—Another ORDER—Would that do? No—For that ORDER in checking the first, may become itself too powerful—Or be got the better of by its adversary—Or become its rival and keep the State in hot water, and contention, all three of which are equally distant from the nicely adjusted Balance we talk of—What then are we to do? We must check this check itself, we must mitigate its excess, or strengthen its deficiency, and stop the hostility, which breeds contention in a State.

Not by ONE ORDER.

Nor TWO ORDERS.

But THREE ORDERS. THIRD, check.

And how is this to be done? How can it be done, but by adding another ORDER? We have now got so far, that a check must be created, a prop added, and the acrimony of hostility, qualified and amended between TWO ORDERS—Why then, all these purposes are answered by a THIRD—A THIRD will check an excess, a THIRD will strengthen a deficiency, a third will mitigate the hostility, which breeds a contention in a State, and which is the evil we complain of—For let us suppose that a State consists of TWO ORDERS, and that ONE is exceeding—Will not a THIRD check it?—Is it to be supposed that TWO ORDERS will fight for the purposes of ambition, as we have proved they have done, and that they will not, for self preservation? It is impossible—And if they do not do

* See Chap. XXXI. of this book.

† See Chap. XXX.

this, they must see that they will be inevitably swallowed up, if they allow the exceeding ORDER, to get to any great pitch or ascendancy over them—They are therefore pledged to resist it in the beginning, to oppose it with all their forces—This then, as to the first point of checking an exceeding ORDER:

Nor are the consequences of A THIRD ORDER, less useful with respect to the second point, or strengthening a deficiency, for from the same motive, that it checked an exceeding ORDER, it will assist a weaker, indeed, they are correlative parts of the same thing.

The last is mitigating the hostility which breeds contention in a State, and in this way, a THIRD ORDER is as eminently serviceable, as in either of the other points of view—For what was the motive to that hostility? A constant, unsubduable ambition to get the Supreme power, which would be the infallible consequence of ONE ORDER being annihilated, where there were only TWO in a State—But would this be the case, were there THREE, or rather would not the fixed opposition of the other TWO, as often as the attempt was made, render such an enterprize nugatory, and hopeless? This then, would take away the motive to the ambition, the fixed hostility between two Orders, that hostility *ad internecionem*, which so often torments a State in the shape of rivalry, leaving only a proper jealousy in its room.

So far Speculation, and now for the aid of Experience—Does any one suppose that Governments can go on, so as not to need a check? If they do, let them refer to the testimony of history*—That is solid fact, in that, there can be no delusion, or deception—Have we not seen MONARCHY, ARISTOCRACY, and DEMOCRACY, con-

* Is not this the very thing, that occasions the *ανακυκλωσις πολιτειων* of Polybius (revolution of Governments) so often quoted, MONARCHY into DESPOTISM, DESPOTISM into ARISTOCRACY, ARISTOCRACY into OLIGARCHY, OLIGARCHY into DEMOCRACY, DEMOCRACY into OCHLOCRACY, and OCHLOCRACY back into MONARCHY and DESPOTISM again.

stantly going into their corresponding excesses of DESPOTISM, OLIGARCHY, and OCHLOCRACY? Have we not seen them doing so, as often as they have been unchecked, and unqualified? Have we not seen them taking their corresponding turns of power, pride, and violence, as often, as the interests, or passions of the prevailing men led them? * MONARCHY under an active Prince, ARISTOCRACY under designing Nobles, and DEMOCRACY under factious Demagogues? Well then, they require a check, and what must that check be? It cannot be a SECOND ORDER, for we have seen a SECOND ORDER, and yet the consequence, that is, a proper check, or Balance has not resulted—It cannot be a FIRST, for that is the very evil complained of—Why then it must be a THIRD, if there be such a thing as a Balance at all, for there are no more than THREE ORDERS, in nature, no more than THREE, in reality, or existence.

Experience
pointed—
NOBILI-
TY and
PEOPLE.

But perhaps this may appear speculative too—Besides it is negative, as has been observed—We shall then take experience at once. We shall ask the question, if there had been THREE ORDERS at Rome, for there never have been THREE ORDERS yet in antient times (THREE ORDERS there always have been, either open, or concealed, but we mean THREE OPEN, DISTINCT ORDERS armed with the powers of Government) we ask if there had been Three such at Rome, whether it would not have mitigated the contentions of the State, whether it would not have softened the dissensions of the City? If Kings had come in the place of Consuls (for the latter, as we have shewn, were no ORDER†) whether they would not have interposed their authority, checked the greater force, assisted the weaker, and sooth-

* See Chap. XXV. XXVI. and XXVII. into DESPOTISM, OLIGARCHY, and OCHLOCRACY—It is to be observed further, that if Polybius calls ΒΑΣΙΛΕΙΑ, or KINGSHIP, the legitimate, and ΜΟΝΑΡΧΙΑ ΜΟΝΑΡΧΙΑ, the abuse, still we venture to take MONARCHY, the legitimate, and Despotism, the abuse, on account of common usage.

† See Chap. XXX. and XXXIII.

ed the divisions of the State? But we need not go to questions, and suppositions; we saw Kings at Rome, and we saw what they did—They did mitigate the dissensions of the City, they did meliorate the condition of the State—Though with too little power, or too much to make an ORDER, they shewed what they would have done, if they had been so—They had, part of the Legislative, Judicial and Executive powers, so had the Senate, so had the People—They were the guardians of the customs, and laws, proposed and voted in the latter, judged causes, executed laws, commanded the armies—The Senate voted on laws, on peace, and war, judged causes, bore offices—The People voted on laws, on peace, and war, and chose to offices†—So that they had the powers of Government divided between them, though not in an equal manner.

As to Carthage, Sparta, and Athens, as we said, they were chiefly close Governments in the proper sense, that is, confined to ONE ORDER, being more ARISTOCRACIES, or DEMOCRACIES than any thing else—If one wished to be speculative, they might say, that some of them, Carthage and Sparta for instance, were somewhat of THREE, more of TWO, but most of all, of ONE ORDER. That accordingly there was a little Balance, more Confusion, and most Closeness—And there might be arguments found to support this system—But the truth is, that these States were so much of One, or at least Two Orders, || as to exclude much reasoning upon the subject.

Such would be the effect of a THIRD ORDER upon NOBILITY and PEOPLE—We now come to another combination, King and Nobility—As the Feodal system is described, see p. 116. the King was a Great Sovereign, the Nobles so many lesser ones—They had the whole

Carthage,
Sparta,
Athens, &c.

KING and
NOBILITY.

† See for this Rollin's Roman Hist. Vol. i. p. 21. Eng. Transl. Oct. Ed.—Chusing to offices, was Executive. *Qui facit per alium facit per se.*

‡ See Montesquieu Esprit des Loix, Vol. i. p. 239, Oct. Edit.

|| They admitted the People sometimes, as for instance, Carthage, at last, to which Polybius ascribes the ruin of the Republic.

Legislative, Judicial, and Executive vested in them, in their own territories—The King had the paramountcy—But the effect was the same, though exemplified in a different manner—The consequences of a biform Government, evidently appeared—To recur to the passage of Robertson already quoted, and which also points out the remedy, the MONARCHICAL, and ARISTOCRATICAL parts of the Constitution, having no INTERMEDIATE POWER to balance them, were perpetually at variance, and jostling with each other.

KING and
PEOPLE.

The last combination is King, and People—The effect of a THIRD ORDER upon these, is best shewn by the dreadful gap that exists between, and the atrocity of the convulsions that follow them—We need not refer again here to the examples of Messene, and Argos, nor to the tragic fates of Louis XVI. of France, and Charles I. of England, simply remarking that these most clearly point out, that the single hope we have to be delivered from such convulsions, is to be found in THREE ORDERS and THREE ORDERS only.

Testimony
of Authors
and Legis-
lators.

The third and last proof upon the subject, is the testimony of Authors, and Legislators—Have not Cicero, Tacitus, Polybius, Plutarch and Aristotle praised THREE ORDERS,* and did not Lycurgus and

* CICERO.

Statuo esse optime constitutam. Rempublicam, quæ ex tribus generibus illis, REGALI, OPTIMO, et POPULARI, sit modicè confusa. Fragm. de republ. lib. ii.

TACITUS.

Nam cunctas nationes, et urbes, POPULUS, aut PRIMORES, aut SINGULI regunt—Delecta ex his, et constituta reipublicæ forma, laudari facilius quam evenire, vel si evenit, haud diuturna esse potest. Ann. lib. iv. 33.

POLYBIUS.

Συμβαίνει δὴ, τὰς πλείους τῶν βαλομένων διδασκαλικῶς ἡμῖν ὑποδεικνύειν περὶ τῶν τοιαύτων, τρία γένη λέγειν πολιτείαν, ὡς τὸ μὲν καλεῖται ΒΑΣΙΛΕΙΑΝ, τὸ δ' ἈΡΙΣΤΟΚΡΑΤΙΑΝ, τὸ δὲ τρίτον, ΔΕΜΟΚΡΑΤΙΑΝ

* * * * *

others endeavour to constitute of them?*. That they made the attempt is clear from their works being mistaken for the accomplish-

Δῆλον γὰρ, ὡς ἀρίστην μὲν ἡγήτεον πολιτείαν τὴν ἐκ ΠΑΝΤΩΝ ΤΩΝ ΠΡΟΕΙΡΗΜΕΝΩΝ ΙΔΙΩΜΑΤΩΝ συνεστώσαν. E sext. hist. exc. Tom. ii. p. 4. Oct. Ed.

Again,

Ὅτι ἀρίστη πολιτεία ἡ ἐκ ΠΑΝΤΩΝ ΤΩΝ Εἰδῶν (ΙΔΙΩΜΑΤΩΝ) συνεστώσα. Ibid. p. 3.

PLUTARCH.

Διωρμένη γὰρ ἡ πολιτεία, καὶ ἀποκλινέσθαι νῦν μὲν ὡς τῆς ΒΑΣΙΛΕΙΣ, ἐπὶ Τυραννίδι, νῦν δὲ ὡς τοῦ ΠΛΗΘΟΥ ἐπὶ Δημοκρατίαν, οἷον ἐρυμα τὴν τῶν ΓΕΡΟΝΤΩΝ Ἀρχὴν, ἐν μεσῷ θεμένη, καὶ Ἰσορροπήσασα, τὴν ἀσφαλεστάτην τάξιν εἰσέχευε καὶ καταστάσιν—Αἱ τῶν Ὀκτῶ καὶ Εἰκοσι ΓΕΡΟΝΤΩΝ, τοῖς μὲν ΒΑΣΙΛΕΥΕΙ προτιθεμένων, ὅσον ἀντιβῆναι πρὸς δημοκρατίαν, αὐτῆς δὲ ὑπερτερεῖν μὴ γενέσθαι τυραννίδα τοῦ ΔΗΜΟΝ ἀναρρουντῶν. Vol. i. Ed. Tons. p. 91.

ARISTOTLE.

ΠΟΛΙΤΕΤΕΣΘΑΙ δὲ δοκεῖσι καὶ Καρχηδόνιοι καλῶς, καὶ πολλὰ περιττῶς πρὸς τὰς ἄλλας· μάλιστα δ' ἐνία παραπλεσιῶς τοῖς Λάκωσιν. de Rep. lib. ii. ch. xi. And this is identified with the attempt at THREE ORDERS, by Polybius describing Lacedæmon and Rome of THREE ORDERS, and then making Carthage the same with them. Καὶ γὰρ ΒΑΣΙΛΕΙΣ ἦσαν παρ' αὐτοῖς, καὶ τὸ ΓΕΡΟΝΤΙΟΝ εἶχε τὴν Ἀριστοκρατικὴν ἐξουσίαν, καὶ τὸ ΠΛΗΘΟΣ ἦν κυρίον τῶν καθηκοῦντων αὐτῷ· καθόλου δὲ, τὴν τῶν ὅλων ἀρμονίαν εἶχε παραπλήσιαν τῇ Ρωμαίων καὶ Λακεδαιμονίων.

* It is to be observed here, that we take the Constitutions all through, as originally framed by the Legislators, to prove the attempts at the Balance, by three *Bodies*—The additions, as Γερουσία at Carthage, Ephori at Sparta, and Βολή at Athens, were annexed afterwards, to cure the deficiencies of their not being ORDERS, and only shew how often they split them in vain—See for this Ch. XXX. Thus then, following on,

MINOS

or the plan of Government

he intended,

Constituted Crete of

Three Bodies

Cosmi

Senate

People

Constituted Carthage of

Three Bodies

Suffetes

Senate

People

ment of them*—That they did not succeed, is also clear, from their not having been able to obtain a Balance—But while the consequences that flowed from these attempts, shew their inefficiency, and the fallacy of the praises bestowed upon them, they equally demonstrate, the expediency of the thing desired—They (the Antients) might have seen the necessity of THREE ORDERS, or of a Threefold Balance, and not have had skill to accomplish it.

Antients might have known advantages of a Balance, but not how to get it.

And this was exactly what they did—They knew that a Threefold Opposition was necessary, but they did not know how to effect it—

LYCURGUS

Constituted Sparta of
Three Bodies

Kings

Senate

People

SOLOON

Constituted Athens of

Three Bodies

Archons

Senates

People

Constituted Thebes of

Three Bodies.

Constituted Corinth of

Three Bodies.

The plan

found among the memoirs of

SERVIVS TULLIVS

Constituted Rome of

Three Bodies.

Consuls

Senate

People.

Upon all these Constitutions see the various passages quoted in Ch. XXXIII.

* Δηλον γὰρ ὡς ἀρίστην μὲν κητεὸν πολιτείαν, τὴν ἐκ ΠΑΝΤΩΝ ΤΩΝ ΠΡΟΕΙΡΗΜΕΝΩΝ ΙΔΙΩΜΑΤΩΝ συνεστῶσαν, τετὴ γὰρ τῇ μερὲς, ἡ λογὴ μόνον, ἀλλ' ἐργῶ, πείραν εἰληφάμεν, Λυκῆργος συστήσαντος πρώτῃ κατὰ τὸν τοῦ τροπον, τὸ Λακεδαιμονίων πολιτεύμα. Polyb. Vol. iii. p. 4. Vindob. Edit.

And it is just in this way, that we adduce their testimony—They were convinced that an Opposition of Three, would infer the consequences we mention—That it would check, strengthen, and mitigate—That Three could never be in diametrical opposition to each other—All this they knew, and we know that they did, from the objects proposed, and the praises bestowed on them*—That they failed in their attempts, that they did not know what an ORDER was, or thought that something else would produce a Balance, whether the miscarriage, happened, from the backward state of society, or from what other cause, it imports as little to know—Their failure in the attempt is of no consequence, while the having made it, and made so often, shews the importance of the object.

Here then is a triple proof, of Speculation, of Experience, and Authority—Whether we go to the sources of reason, or contemplate the consequences of fact, or consider the testimony, of Legislators, and Authors, they are all equally in our favour—Can we desire more on the subject? Can we wish for more ample satisfaction, and evidence? Triple proof.

THREE ORDERS are then the good—Three Orders are what we ought to wish, deserve, and desiderate—Which keeps a Government in check, in perpetual succour, and mitigation—Which insures the strong of being opposed, the weak of being supported, the State of being consolidated, and consistent—Which without giving way to any excess, or any extravagance in checking that excess, keeps all in harmony, and peace, in cordiality, consistence and comfort—That gives freedom without licentiousness, and union without closeness—In short, that without incurring any bad consequence of Government, gives every good one, uniting all in harmony, freedom, and peace, security, liberty, and happiness! THREE ORDERS the good.
Uniting all the advantages of Government.

* See passage of Plutarch *Αἰσχρονομία*, &c. p. 103, and *Αἰσχρονομία καὶ εὐνομία*, &c. *ibid*.

CHAP. XXXV.

THAT THE THREE POWERS MUST BE VESTED IN THREE ORDERS SO AS TO
MAKE A BALANCE.

Three pow-
ers must be
vested in
THREE
ORDERS,
so as to
make a Ba-
lance.

NOR when the Three powers are vested in THREE ORDERS, is the whole business done—They must be so vested, as to make a Balance—And here come in our old principles, that a Balance depends upon a Division of Power, and a Division of Power upon Power, and Persons*—That the Powers should be given equally, that is correspondingly, and the Persons who are to receive them, made correlative, and parallel†—But how to obtain this correspondence, or equality of Power, and this parallelcy, (if we may be allowed the expression) of Persons, or ORDERS, is the question—First then, of the equality of Power.

CHAP. XXXVI.

THAT TO GIVE POWER EQUALLY, THE ORDERS WHO ARE TO RECEIVE IT,
MUST BE MADE PERMANENT.

To give
power equal-
ly, OR-
DERS who
receive it,
made per-
manent.

THE first step in giving the powers equally, is to make the ORDERS who are to receive them, permanent—For if they have not a fixed situation, an established, and permanent existence in the Constitution of a State, all equality of power is at an end—They have in fact no power at all, for they are liable to be extinguished at

* See Ch. XVII. XVIII. and XIX. for all this.

† See Ch. XXVIII. and XXIX. for this.

every moment—The first step then, in giving equality of powers, is to give the ORDERS who are to receive them, a permanent existence in the constitution.

CHAP. XXXVII.

THAT TO MAKE THE ORDERS WHO ARE TO RECEIVE POWER, EQUAL, THEY MUST BE MADE, SO AS NOT TO OVERWHELM EACH OTHER.

BUT after all that can be done in distributing the powers, to render the ORDERS equal, they may be so constituted naturally, as to have a superiority, one over the other, in that way—Whatever pains therefore we may take to secure them an equality by the division of powers, either as to carrying on the Government, or maintaining a permanent existence in it, there may be something in them, that will defy our efforts—For there are in every ORDER, two constitutions, a natural, and artificial.—The natural, is that, which they have independent of Government, or the powers given by Government, the artificial, that, which they have dependent on these things*—And it is evident, that the former of these, must be by far the stronger—What comparison can there be, between a natural, and artificial force? What parallel between the natural, strength, or weakness of a KING, NOBILITY, or PEOPLE, and any thing we can do, to overcome them? Between the weakness of a sole ORDER, the weight of the RICH, the multitude of the POOR, and any thing we can do to extinguish it? We must then begin, by modelling the ORDERS in the first place—We must regulate them so, as to render fit for re-

To make ORDERS who receive power equal, made, so as not to overwhelm each other.

In every ORDER two constitutions, a natural and artificial.

* See on this Chap. XXX.

Natural
must be mo-
delled and
regulated.

ceiving powers, malleable, if we may so express it, for the purposes of society—Nor is there any contradiction in this—There is a great difference between regulating, and overcoming—A wide distinction between conducting, and extinguishing—He who would regulate, only leads, and modifies, the course of a river—He who would extinguish, stops it altogether.

CHAP. XXXVIII.

THAT THE ORDER OF KING MUST BE STRENGTHENED.

ORDER of
KING
strengthen-
ed.

WE now come to the natural constitution of the ORDERS, and to consider them abstracted from the powers assigned to them. And this we are to do, in order to appreciate their force, and to see how far that force must be increased, or diminished.—Taking them then, in this way, we find the ORDER of KING, to be weak, and feeble in itself—For what is KING, considered as an ORDER? A sole, and single person—A sole and single person, whatever powers he may have assigned him, against collective, and aggregate forces—That is, ORDERS composed of collective and aggregate forces, whatever their numbers be, prepared to overpower, and overwhelm him—To overpower and overwhelm him, naturally and constitutionally, for naturally, and constitutionally, surely, whatever artificial powers may be imparted, NOBILITY, and PEOPLE, are incalculably, infinitely, nay innominably, if we may so express it, superior to him. The ORDER of KING then, naturally speaking, must be infinitely reinforced, and strengthened.

CHAP. XXXIX.

THAT THE ORDER OF NOBILITY MUST BE REDUCED.

AND if the ORDER of KING must be reinforced, and strengthened, so must that of NOBILITY, be reduced—For what is NOBILITY, considered as an ORDER? A body of men, great in rank, great in wealth, and great in the weight, and influence, following that rank, and wealth—And if it be this body of men, great in rank, wealth, and influence, how considerable must be its advantages over the other ORDERS? Over the KING, by it's numbers, and over the PEOPLE, by it's weight, and influence—Why then, it must be reduced, and impaired proportionally, if we do not wish it to be an overweening, a needlessly overweening, nay, pernicious body, in the State.—Do we not see to what a pitch it attains in those Countries, where it is not so impaired, and diminished? It becomes an imperium in imperio, a nation within a nation, a gens in gente—Did we not see this in France?—Have we not seen it in other countries? Intermarrying, connecting, and accumulating within itself, till it overpowers, or is overpowered by, the nation? It must then be diminished.

CHAP. XL.

THAT THE ORDER OF PEOPLE, MUST BE REDUCED FURTHER.

AND if the ORDER of NOBILITY must be reduced, and diminished in its strength, so must that of the PEOPLE, be still further reduced.

* Which produced the revolution in 1789, which whatever it was in the beginning, brought eventually such dreadful mischiefs on mankind.

ther—For what is the PEOPLE? An irresistible multitude, (still talking of as an ORDER) impracticable in it's passions, impracticable in its violence, impracticable in its numbers—Certainly inferior to KING, and NOBILITY, in the common course, and routine of affairs, but as certainly, and infinitely superior to them, in agitations, and commotions*—It is then, that it becomes truly formidable, then, that it becomes impracticable, and irresistible—And it is ever on the eve of being pushed on to these commotions, by the influence, and agitations of its Demagogues†—Witness these revolutions, and *στάσεις*, these ever recurring convulsions, which distinguished the States of Greece, as well as others, of a strictly popular nature‡—To prevent then these revolutions, to prevent these ever returning convulsions, it is necessary to impair, and diminish it's force (it's blind force)—To impair, and diminish it in a great degree, in a great, considerable, and manifold one—This is necessary, or we do nothing—If we do not reduce it in this way, if we do not diminish it in a manifold degree, we can never have it practicable, never have it convenient, and suitable, never properly malleable, as we expressed it before, for the purposes of Government—As it was necessary then, to strengthen the Order of KING, so is it, to reduce and mitigate, those of NOBILITY, and PEOPLE.

* See again France, and all Revolutions.

† It is on this account that Aristotle observes that DEMOCRACY, or the absolute Government of the PEOPLE, has many points of resemblance with DESPOTISM, or the absolute Government of the KING. See the passage, Chap. XV.—*Τὸ ἴδιον τὸ αὐτὸ, &c.*

‡ See Herodotus, and Thucydides—*ἐκπύρην τῇ στάσει*.

CHAP. XII.

THAT THE ORDER OF KING, MUST BE STRENGTHENED BY INHERITANCE.

AND if the ORDER of KING must be strengthened, and reinforced, the question is, how to reinforce it—And here, in order to obtain a just notion of this, the way will be to enquire, whence proceeds it's feebleness—It is from it's singleness, from it's solitude, its *ερημια*, or destitution, as the Greeks would call it, which exposes it to the other ORDERS, and renders it liable to be overpowered by them—The way then to strengthen it, will be, to correct this *ερημια* this solitude, as much as possible, and give it all the aggregateness and body in a State, practicable—And how again is this to be done? First, by fixing it in a particular family, or race, that it may be the generation, or Offspring, that is considered, not the individual, and that in that way, it may support some kind of footing, with the other ORDERS—The next thing is, to render it Inheritable, in that race, that when the KING, or person, who actually bears the Supreme power, gives way to nature, there may be no interruption, or gap, so as to allow of any other (person stepping) in, but the sovereign authority proceed in undeviating, and unceasing succession—The third thing is, to fortify it with powers of such a nature, as by their activity, and solidity, shall make amends for the singleness of the ORDER, and compensate as far as possible its natural disadvantages in that way—But of this, of course, afterwards—All these things have their effect, and are necessary to strengthen, and reinforce the ORDER—And if any doubt it, they have only to look to those Countries, where Crowns have been put upon another footing—Where

ORDER of
KING
strengthened
by Inheri-
taunce.

they have not been confined to particular families, and where there have been constant disputes between these, concerning the succession, to the great weakening of the royal dignity*—Or where they have been elective, and have produced constant contentions and intrigues mutilating greatly thereby, the royal authority, besides exposing the kingdom to foreign invasion, as has been lately the case in Poland†—Or where the powers given to it, have not been sufficient to protect and cover it's natural weakness, and where it has finished, by first pulling down itself, and then along with it, the Government of the Country, as has been the case in that very Poland, and Rego-republican France, for want of adequate authority.‡ So that all these things are requisite for strengthening the ORDER of KING to a proper pitch, and rendering it, what it ought to be, the safeguard, and protection of the nation—It is the fixing it in a particular family, that dignifies it, it is the filiating it, if we may so call it, in that family, that secures it, and it is the conferring certain powers upon it, that gives it a solidity, a fixed consistence, and settled authority in the Constitution—So that it acquires at last, a patriarchal and majestic appearance in the eyes of the nation, which though undoubtedly mischievous, and absurd, when carried to an improper pitch§, is an excellent principle to strengthen and confirm a good Government—As to the idea of a double Crown, or vested in Two, that is rather to be no-

* Though in England, the succession was certainly not extended to several families, yet the wars of York, and Lancaster, shew the consequences of several families, and where there were two different families as at Sparta, the Heraclidæ (and may have been at other places,) there were constant misunderstandings between them.

† In the year 1778, see first division of Poland.

‡ See Louis XVI. of France left with the Convention, and a solitary *Veto* upon their laws.

§ See the idea of the old *jus divinum*, or divine Right.

ticed as a contradiction of the thing than as originating in any sound, or rational principle*—We have seen it at Rome,† we have seen it at Sparta‡, and may have in other countries, but instead of strengthening, where it took place, it has always had the effect of distracting, and weakening the Government—The ORDER of KING then, must be considered as confined to ONE, and being confined to ONE, this appears the only way to reinforce and strengthen it.

CHAP. XLII.

THAT THE ORDER OF NOBILITY MUST BE REDUCED BY PRIMOGENITURE.

AND if the ORDER of KING must be strengthened by Inheritance, so must that of NOBILITY, be reduced by Primogeniture—
 For what is NOBILITY taken as an ORDER? Is it not a race of men, strong in rank, strong in wealth, and strong in the weight, and influence following that rank, and wealth, according to their spirit, which is pride (still speaking of as an ORDER) looking down on, and despising other men? And if they do this, must not they constantly intermarry with one another, connect themselves with one another, and if not impaired, as we said above, continually accumulate within themselves, till they become at last, as here stated, an imperium in imperio, a nation within a nation, a gens in gente? This was best seen in France, where they did so accumulate within themselves, till they divided, and distracted them

ORDER of
NOBILI-
TY reduced
by Primo-
geniture.

* Certainly a contradiction of the idea ΒΑΣΙΛΕΥΣ, or ΜΟΝΑΡΧΟΣ, a Sole as to the person, or Governor.

† See Romulus, and Tatius.

‡ Two races of the Heraclidæ.

from the nation, to such a degree, that they pulled down themselves, and their Sovereign along with them*—And the spirit that leads them to this, has been seen in all Countries, where they appear in any measure†—In all, they draw to one another, in all associate exclusively (except where impaired, as said above) like a Cast, regarding others (always talking of as an ORDER) with hostility, and alienation—Considering the Sovereign in some Countries, as an obstacle to their power, in others, as the support of it, but in all (till circumscribed) the PEOPLE as an odious, and detested rival, the more hated, because the more despised—Was it not this that occasioned the confusions at Rome, this, the distraction of the Grecian Cities?‡ What then is the cure for it? What so natural, as to make them part of the PEOPLE themselves? This of course, will take away the division and seclusion, this, the insulation, and separation which is the foundation of all the mischief—And how is this to be done? By Primogeniture, that is, fixing the succession to NOBILITY with the eldest son, and making the rest of the family, Popular, or of the PEOPLE—This will at once prevent the NOBILITY, from becoming too numerous, temper that part of the family, who are NOBILITY, harmonize the rest, and eventually the whole, by incorporating, and associating with the PEOPLE—This will blunt the prejudices of the ORDER, and assimilate and incorporate them with the body of the nation—They will then no longer look upon the MONARCH as an obstacle to their views (having not ambition, that is, power enough, the foundation of that ambition, to consider him as

* This was precisely what occasioned the French Revolution—The disregard of the PEOPLE grew so strong, and the oppression so great, that the latter thought the NOBILITY Tyrants, whom to extirpate, was liberty, and they accordingly seized on power to their own destruction.

† In Turkey, they hardly appear at all, the Grand Signor's authority so totally smooths down and levels every thing.

‡ Strabus.

a rival,* but rather look up to, for protection, and support—They will no longer consider the PEOPLE, as their enemies, having not distinction enough, or alienation from, to regard as different, but rather, part of their families being incorporated with them, and therefore effectually the whole, the same—This then is the way to elevate and refine the PEOPLE, and mitigate, and subdue, the NOBILITY—As Inheritance, was the mode to reinforce the ORDER of KING, so is Primogeniture, to mitigate and reduce that of NOBILITY.

CHAP. XLIII.

THAT THE ORDER OF PEOPLE MUST BE REDUCED BY REPRESENTATION.

BUT the PEOPLE are the ORDER which requires reduction most of all—It is that, which is most impracticable from its numbers, most formidable from its fury, and most dreadful from its violence—From that insurrective, if we may use the expression, disposition, which distinguishes it, and from its overpowering, and overwhelming nature, when once roused, and excited—And it is ever upon the eve of being so roused, and excited, from the turbulence and ambition of its Demagogues—Infinitely inferior, as we observed, to either KING, or NOBILITY in common moments, from its never being seen, or heard of, it is as certainly and infinitely superior to them, in agitations, and commotions—It is then indeed, that it is truly formidable, then, that it becomes impracticable, and irresistible—Then it is in vain to oppose it, and it is this evil, and this evil alone, that renders it so intolerable in Government—How

ORDER of
PEOPLE
reduced by
Representa-
tion.

* See the History of Scotland.

then, is it to be avoided? How are we to get rid of it?—By seeking to its root, by searching to its foundation—And what is this foundation? The numbers of the PEOPLE—It is these numbers, that worked upon, goaded, and agitated by the Demagogues, rise to irresistible fury—Witness the antient *στάσεις* of Greece, these *στάσεις*, or commotions that we have quoted so often, the expulsions from Rome, the ejections from the Grecian Cities *—The agitation of the Tribunes in the former, the effect of the Orators in the latter—And if such be the effect of these winds, these agitations upon such an ocean, these numbers, take them away—Take away the excess that causes, remove the superfluity that occasions—And how again is this to be done? By taking one in the place of ten, ten instead of a hundred (no matter what the proportion) a hundred for a thousand, in a word By Representation—This it is, that will remove the evil—This it is, that by diminishing the numbers of the PEOPLE, will enable it to act—This it is, that by selecting proper actors, will let it know, why it is submitted—This it is above all, that by confining it within a right circle, will put off the possibility of revolutions, by removing the swell that causes them, these ever recurring revolutions, which disgraced the States of Greece—That will effectually remove the agitations, or at least, the convulsions of party—That in fine, will enable States to conduct themselves in good order, and unite all the advantages of a free, and open, with those of a regular and tranquil Government.

It was this, that was reserved for the invention of modern times, this, that forms so capital a feature, in the list of modern improvements—This, that organizes a mass, that brings shape out of Chaos, and form out of confusion and nothing—This, that teaches the blind to see, the furious to be meek, the obstinate, to be patient, and submissive—This,

* *ἔκπλιττον τῆς στάσεως*, see Herod. and Thucyd. as before.

that arranges, and methodizes every thing, regulating, and teaching it, to play its part in Government—It was this, that the Antients wanted, and the extent of their misfortunes, shewed the scope of the desideratum—The PEOPLE always came in upon them, like an irresistible mass—They were obliged to oppose to them, the power of a King, or a Senate, which excluded or annihilated them entirely. It was on this principle, that Lycurgus would not let them discuss at Sparta, and that at Carthage, they had no vote, when the Senate were unanimous—The Legislators treated them like wild beasts, whom they were obliged to chain down, or be devoured by—They had no alternative but confusion, or slavery—But that option, which the Antients never had, and never could have, is afforded us by Representation—It is that, which exempts us from the necessity of a severe choice, and allows us to take liberty, without subjecting, to anarchy and confusion—That unites peace with freedom, and order with discretion—In short, that suffers us to take every advantage of a good Government, without submitting us to any of the evils of a close one—This then, Representation, is the best way, to regulate, and organize the PEOPLE—As Inheritance was the mode to reinforce the ORDER of KING, so are Primogeniture, and Representation, to mitigate, and subdue those of NOBILITY, and PEOPLE.

This that gives freedom without confusion.

CHAP. XLIV.

WHAT POWERS OUGHT TO BE EXERCISED BY EACH OF THE ORDERS.

AS we have now got the ORDERS, reduced and fortified as we wish, the question will be, what POWERS ought to be exercised

What POWERS exercised by each of the ORDERS.

by, that is are best suited to them, to obtain the balance desired—But it is impossible to determine this, till we know the nature of the POWERS—We shall therefore enquire into them.

CHAP. XLV.

THAT TO CONCEIVE A CLEAR IDEA OF THE POWERS WE MUST CONCEIVE THEM ABSTRACTED FROM THE BODIES THAT EXERCISE THEM.

To conceive
clear idea of
POWERS,
&c.

FOR if we do not, we shall be liable to misunderstand ourselves at every moment—We shall be thinking, that we are taking away so much from this, or that power (that is the body conceived for it,) when the question is, what ought to be given to that body—There is then, but one way of conceiving the thing distinctly, and that is, that the LEGISLATIVE is the POWER of making the LAW, or DICTATION of the State, the JUDICIAL, the POWER of making the JUDGMENT, or DISCERNMENT of it, and the EXECUTIVE, the POWER of making the EXECUTION, or ACCOMPLISHMENT of it.

CHAP. XLVI.

THAT THE LEGISLATIVE IS THE POWER OF MAKING THE LAW OR DICTATION OF THE STATE.

LEGISLA-
TIVE
POWER
of making

LEGISLATIVE or legislativum, signifies as we know, making law, from the Latin words, lex and fero—Of course, LEGISLATIVE,

or the LEGISLATIVE POWER in the State, or that part of political LAW of power, which is called LEGISLATIVE, is the POWER of making the LAW, or DICTATION of the State.

CHAP. XLVII.

THAT THE JUDICIAL IS THE POWER OF MAKING THE JUDGMENT,
OR DISCERNMENT OF THE STATE.

THIS also is clear. Judicialis comes from judicium, which signifies judgment—Judicialis then, is of, or pertaining to, judgment—Judicial then is the same thing, and taken as a POWER in the State, must mean the power of making the JUDGMENT of the State.

CHAP. XLVIII.

THAT THE EXECUTIVE IS THE POWER OF MAKING THE EXECUTION,
OR ACCOMPLISHMENT OF THE STATE.

FOR a similar reason—Executive is that which executes, or makes execution—The power of executing then, or the EXECUTIVE POWER in the State, is the power of making the EXECUTION, or ACCOMPLISHMENT of the State.

CHAP. XLIX.

THAT THE LEGISLATIVE GOES THROUGH FOUR DEPARTMENTS OF THE STATE, INSTITUTES, MEASURES, REVIEW OF POWERS AND ALTERATIONS OF THE CONSTITUTION.

LEGISLA-
TIVE goes
through, &c

Law gene-
rally.

Politically.

Exclusion of
will.

Course of
proof.

THE meaning of Law, is a rule by which any thing is governed—Thus it is, as Montesquieu observes, that we say the laws of nature, the laws of motion, the laws of the planets, meaning the laws, by which these things are regulated.

When we say the LAW of the State then, we must mean the LAW, or dictation, by which the State, or the Community, or All are regulated—It must therefore be opposed to will, mere will, varying will, and inclination, for as far as that will enters, there can be no regulating over him, who exercises the will, but he regulates others.—In this sense we took it (see Ch. XII. XIII. XIV. XV. and XVII., and it is a sense no less congenial to the real meaning of the word, than to the interests of sound Government and liberty.

In that last named (Chapter XVII.) we endeavoured to shew, that Legal Government, “or an exclusion of will, depended upon a mixture of wills, (see ditto) that is, an opposition or Balance of them*”—After that this Balance depended upon a Division of Power, and that again upon Power, and Persons being equal—That this equality was not to be found in ONE ORDER, nor TWO ORDERS, but THREE ORDERS, and then only with care, and attention—By making the Orders permanent, and so as not to overwhelm each other—And having then endeavoured to arrange them, so as not to overwhelm, we are now, at the other branch of equality, viz. what powers are best suited to each of the ORDERS, and we are actually at that of Law-making—Such is the course we have pursued, such is the progress

* Resembling the two sides of an equation, which extinguish one another.

we have made, and such is the sense, we have given the word Law, or Dictation, the substance of Legal Government.

This then being the sense of Law, or Dictation, the question is, how ^{How touch-} it touches—What objects it affects, what points it regards, what ^{es.} articles it occupies, and how it affects them.

And first it may be said that these objects are Civil rights. Civil rights, ^{Civil rights.} as we saw in our third chapter of this Book, made the object, and whole object, of Government—They were the end, and only end, they were the sole authority, and pretext for it (See ditto Chap.)—If this be the case, Government cannot be supposed to stop short of, or to go beyond them—In the first case, they would be no cause, no adequate cause, they would not exhaust themselves, in the other, they would go beyond their consequence—See Ch. III. of this Book—Government then must be determined by them, it cannot stop short of, nor go beyond them.

Now Government is Law, and Law Government, in the scope, or subject, they refer to—For what does Government refer to? It refers as above to Civil rights—And how does it refer to them? It refers to them through Law, for all is Legal now, Arbitrary being thrown out of the question (See Ch. XVI.) And if it does refer to them through Law, Law must have the same scope that it has—It must go as far, and can't go beyond it—It must go as far, because Government can only refer to Civil rights, or any thing, through Law—It can't go beyond it, because Law is Government, and must carry Government along with it.

Government then referring to Civil rights, must make Law refer ^{Judgment} to them too—And here we are well aware, that Judgment, and ^{and Execu-} Execution, as described (in Ch. XX., see ditto) are separated from ^{tion} Law—But then, that is taken as POWERS—They are always on ^{embrace} the Law, and therefore must embrace the same subject ^{same subject} as LAW.

Law, or Dictation then, touching Civil rights as much as Government, ^{How law} touches Civil

Rights?
to their ex-
tent.

or rather being itself Government, the question is, how it touches them? How it affects them? To what extent? The answer is, to their own extent—They must find their own limit—To say, that it did not affect them to that extent as they are the scope of Government, would be to say, that it affected them, and did not affect them at the same time.

In their sim-
ple shape by
INSTI-
TUTES.

And first we must say that these rights appear in the most simple shape,—They appear as the gift of GOD, to the individual direct, as Life, Property, and Free-agency, primitive, and which must not in any way be taken from him—See Book I. Ch. III. In this way, it is the business of Law, or Dictation, or Government, to take care that they are not taken from him, that they are not assailed in any respect, and that they are preserved in all respects—To pronounce them sacred, to punish the least infringement of them, to regulate in all cases, where it is called for—If Life be attacked, to punish such attack—If Property be invaded, to vindicate such invasion—If Free-agency be injured, to give retribution for the injury, and finally, to ascertain the rights to Property, so that it may be known in things contested, who is the rightful owner—This is what the Law does in INSTITUTES, and this is the first mode in which it touches Civil rights.

In their ag-
gregate by
MEA-
SURES.

But are there no other shapes in which they appear? Is there no other way in which Civil rights manifest and discover themselves? There are certainly—There is a State, or Civil community, which is no other than an aggregate of the protection of these rights, a mass of power to preserve them—These rights embodied in a system—And is this State, this Civil Community, this mass of power, or this system, to be destroyed at once, or at the will of any one? Is it to perish, or be put down at discretion? Is it to be brought to nought at the wink, or nod of any other nation, or in any way whatsoever? It certainly is not—There ought therefore to be MEASURES taken to defend it—To

protect it against foreign enemies, or if need be, against internal—Against the attempts of other States to annihilate it, or against domestic foes within its own bosom—All these are the objects of political, or national power, exercised in its endeavour to preserve itself, or rather Civil rights (See passage of Hume quoted 20th Chapter) which require a certain degree of bodily energy to execute them, and are therefore called MEASURES—It is the duty then, of LAW, DICTATION, or GOVERNMENT to take, or dictate these MEASURES, either against foreign enemies or internal disturbers—As in the former case, to preserve Civil rights to the Individual direct, so now to preserve the system, that is to preserve them.

But is there not yet another thing? If the State be a Mass of power to protect Civil rights, must not there be wheels to carry on this power, must not there be PRINCIPLES, to set it in motion, or to speak more properly, must not these very PRINCIPLES make up, and compose it? They must certainly, and these PRINCIPLES are the very LEGISLATIVE, JUDICIAL, and EXECUTIVE, which we mentioned in our 20th Chapter—(See ditto.) And if this LEGISLATIVE, JUDICIAL, and EXECUTIVE make up this power, may it not so happen, that they may forget their destination? That they may neglect the functions assigned them, and be deficient in the duties imposed on them?—In that case, there should be a revising force in the State to recal them to these duties—To see that they discharge what they were designed to discharge, and that they exhaust and satisfy their intention in Government—That force is this very LEGISLATIVE, which by the nature of human things, must now be employed in REVIEWING itself, along with the JUDICIAL, and EXECUTIVE—As it was the business then of the LEGISLATIVE, to preserve Civil rights in the first instance, to preserve the System that did preserve them.

In their aggregate again
by REVIEW of
POWERS.

in the second, so is it now to revise the **POWERS** that compose this System, and recal them, if need be, to their duty.

In their aggregate again by ALTERATIONS of the CONSTITUTION.

But there is still another thing—If Civil rights appear in their simple shape as held to Individuals, in their aggregate in the System of power raised to preserve them, in their aggregate again, in the **POWERS** that conduct, or compose that System, so do they also in their aggregate still again, in the Machine or fabric itself, that founds the whole of the Structure—In the frame of Government erected for their preservation—In the Constitution, or form of Polity of the State—May it not so happen that this frame, or form of Polity, may have fallen into decay through time, or been ill formed at the beginning? Must it always remain perfect, or is it the nature of human things so to do? It is not—It is then equally of Civil rights, and the preservation of Civil rights, that it should be occasionally amended and renovated—It is then again the business of **LAW** or **DICTATION** or the **LEGISLATIVE**, or **GOVERNMENT**, as the Guardian of Civil rights, to make decrees for such amendment, and renovation, and take upon itself the correction of the System.

These shapes in which LEGISLATIVE touches Civil rights.

These then are the different shapes in which Civil rights appear, and these are the whole of them—What can we conceive beyond the Actual things themselves, the System raised for them, the Powers that conduct or compose that System, and the Constant correction of the whole Structure? Nothing—These things then limit Civil rights—They must then limit **LAW** as their Guardian.

CHAP. L

THAT THE JUDICIAL GOES THROUGH FOUR DEPARTMENTS OF THE STATE, INSTITUTES, MEASURES, REVIEW OF POWERS, AND ALTERATIONS OF THE CONSTITUTION.

JUDGMENT (which is the object of the JUDICIAL) means in general, that power of the mind, that compares two propositions, and tells their relation to one another—From that it is taken to the result of exercising the power, or conclusion formed by comparing two propositions—In this last sense we now use it, to correspond with that of Law.*

JUDICIAL goes through, &c. Judgment generally.

And if it be the conclusion formed by comparing two propositions, the question is, what these two propositions are—And here it is evident that one of these, must be the Law, or Dictation of the State—For if JUDGMENT be on the Law, what can it be but of the Law? Law therefore must be the first proposition which JUDGMENT or the JUDICIAL Power has to compare.

Politically. Of two propositions—Law one.

And if the Law, or Dictation of the State, be the first proposition which JUDGMENT, or the JUDICIAL POWER has to compare, the question is what is the other? It must be the subject of that Law.† For JUDGMENT is of the Law, or com-

Subject of Law other.

* See last chapter on the LEGISLATIVE POWER.

† The TO VIEW.

compares the Law, what then can it compare it with, but its subject, since Law consists but of two parts, the rule, and its subject, or rather one philosophically speaking, for that subject is only exemplifying and realizing it. See Book II. Ch. II. and Book III. Ch. I. —And if Law consist but of these two parts, what has JUDGMENT, or the JUDICIAL to compare it with, but its subject?

Civil rights
subject of
Law.

And if it be the business of JUDGMENT or the JUDICIAL, thus to compare Law with its subject, the next question arises, what that subject is? Civil rights—Civil rights were the subject of Law, Civil Rights were the subject of Government—They must then be the subject of JUDGMENT which is on the law. JUDGMENT must refer through law to them, it must tell the reference of Law to them —And how must it tell it? It must tell it as Law—For the same reason occurs again, as before—We must then recur to the different shapes in which Civil rights appeared, and through which they became the subjects of LAW, or the LEGISLATIVE.

Touches as
LAW.

These shapes were their simple, as held to Individuals, their aggregate, in the System of power raised to preserve them, their aggregate again in the Powers that conducted, or composed that System, and in their aggregate still again, in the Machine, or fabric that founded the whole of the Structure—These were the Shapes, in which Law or the LEGISLATIVE touched Civil rights, they must then be the shapes in which JUDGMENT touches them.

In their sim-
ple shape
by INSTI-
TUTES.

And how again did LAW go through these shapes? How did it touch them in these shapes? It touched them in their first, or simple shape by INSTITUTES—It was, as we saw, in our last chapter, the business of LAW, to guard Life, Property, and Free-agency, in the first instance, and affix penalties to the invasion of them—If Life were attacked, to punish such attack, if Property were infringed, to pursue such infringement, if Free-agency were assailed, in like man-

ner to meet the injury, and also, to tell the titles to Property, in cases, where it was disputed—If such was the business of LAW, we cannot much hesitate, to assign that of JUDGMENT, which is on the Law—If JUDGMENT be, to compare two propositions, and one of them, be the Law, or abstract rule of the State, and the other, the subject of it, that subject most undoubtedly must be, in Life, to see who assailed it, ordaining the punishment of Law, so in Property, so in Free-agency, so also in Contestations concerning Property, correspondingly, telling how its titles apply—In all, ordaining penalties according to Law, in all, appointing possession in the same manner—This is the business of JUDGMENT in INSTITUTES.

This is the simple shape of Civil rights—The next, is their more complicated, or aggregate—That is the shape, as we said, in which they appear as a Community, or Nation, with power to protect them—And it is to prevent this system, from falling to the ground, to save this fabric from coming to ruin, that it is necessary to take Measures to preserve it—To order the expedition of fleets, the march of armies, the taking of internal, or interior MEASURES, for its within prosperity and regulation—But how comes in JUDGMENT, or the JUDICIAL here? How comes in, the comparison of two propositions, where there can be only one, a simple, and MANDATORY Order? It cannot in the first instance, since such adoption by the Law, is a single ordinance, a mere sole prescription of the step to be taken—It must be afterwards on the not taking that step, to compare the conduct of the POWER, that should have taken it with the Order given, and make it render an account of itself—But this of course, must be done on a new Law, always proceeding on the old, else ex post facto—This then, of MEASURES, is the second mode, in which JUDGMENT touches Civil rights, and brings us to the very Review in question.

In their aggregate again by REVIEW of POWERS.

The next shape as we saw, in which Civil rights appeared, was in the POWERS, that conducted, or composed, the System, raised for preserving them—It might happen, as we said, that they neglected their duty—LAW, or LEGISLATIVE then, Orders a REVIEW of them—Upon this, they must be judged—With this Law, JUDGMENT, or the high JUDICIAL of the State, must compare their conduct, as having failed either in judging or executing the laws, whatever the functions, and ordain issue accordingly, only, as was observed, the new law must have the substance of the old in it.

In their aggregate again by ALTERATIONS of the CONSTITUTION.

The next, and last shape, in which Civil rights appear, is in the Machine, or fabric, that founds the whole of the Structure, that is, in the Constitution, or form of Polity of the State.—It may happen, as we said, that it may have fallen into decay, or have been ill formed at the beginning, that it may require to be supplied, improved, or renovated—In that case, it is the business of LAW, or the LEGISLATIVE, to ordain such supplement, improvement, or amendment—And then, if the POWER so ordered to supply it, that is, the EXECUTIVE, fail in performing, to order such REVIEW upon it, as it pleases, and upon this, JUDGMENT, or the JUDICIAL, to give issue accordingly.

These shapes in which JUDICIAL touches Civil rights.

This is the manner, in which JUDGMENT, or the JUDICIAL of the State, goes through the various shapes of Civil rights, in their simple, as held to Individuals, in their aggregate, in the System of power raised to preserve them, in their aggregate again, in the Powers that conduct, or compose that System, and in their aggregate still again, in the Machine, or fabric, that founds the whole of the Structure. In all, comparing two propositions, in all, the abstract rule of the State, with its subject, in all, telling its reference to that subject—And if JUDGMENT, or the JUDICIAL, go through these shapes, so did LAW, or the LEGISLATIVE before it—And if Civil rights

limited the extent of LAW, so must they, of JUDGMENT also—And if it was the appearance of Civil rights in these shapes, that determined that limit in LAW, so must it in JUDGMENT in like manner—And this is their appearance, in their simple shape, as held to Individuals, in their aggregate, in the System of power raised to preserve them, in their aggregate again, in the Powers that conduct or compose that System, and in their aggregate still again, in the Machine, or fabric itself, that founds the whole of the Structure—These then are the extent, or limits of the JUDGMENT or JUDICIAL of the State.

CHAP. LI.

THAT THE EXECUTIVE GOES THROUGH FOUR DEPARTMENTS OF THE STATE, INSTITUTES, MEASURES, REVIEW OF POWERS, AND ALTERATIONS OF THE CONSTITUTION.

EXECUTION in general, means the execution, accomplishment, or perfection, that is perfecting of any thing, by which it is brought to its final conclusion, and termination—And in this, its general sense, it answers very well to the meaning we gave LAW and JUDGMENT—See last chapters—Let the EXECUTION of the State, then, be understood to be, the final end, accomplishment, and perfecting of the Law, or Dictation of it, the last conclusion, by which, all end, and termination is put to it.

EXECUTIVE goes through, &c. Executive generally.

Politically concludes every thing.

And if this be the sense of the EXECUTION of the State, the ques-

tion is what it touches? And here again the doubt returns to what it is? What is the EXECUTION of the State, substantially, and really? The Execution of the Law, or Dictation of it—That is its sense—And if this be its sense, that it is the EXECUTION of the LAW or DICTATION of it, then it must undoubtedly touch whatever LAW or DICTATION does.

Touches
Civil rights.

And if the EXECUTION of the State touch whatever LAW, or DICTATION does, the next question is, what that is? What does LAW, or DICTATION touch? Civil rights—That has been sufficiently agitated, that has been sufficiently discussed in the last, and preceding chapters—Civil rights were the subject of Law, Civil subject of Government.

As Law.

EXECUTION then touching Civil rights, because LAW does, the question is, how it touches them? The same answer will be afforded here, as before, viz. as LAW.

AND how is this? What were the shapes in which LAW or DICTATION touched Civil rights? In their simple shape, as held to Individuals, in their aggregate, in the System of power raised to preserve them, in their aggregate again, in the Powers that conducted, or composed that System, and in their aggregate still again, in the Machine, or fabric, that founded the whole of the Structure—These were the shapes, in which LAW, or DICTATION touched Civil rights—These then must be also the shapes, in which EXECUTION, or the EXECUTIVE touches them.

In their
simple shape,
by INSTI-
TUTES—
Life, &c.

And how does it go through these shapes? How does it touch Civil rights in these shapes? As LAW—LAW touched Civil rights in their simple shape as held to Individuals by INSTITUTES—So must EXECUTION also—It was, we saw, the business of LAW, to provide ordinances for the preservation of Life, Property, and Free-agency, attaching penalties to their invasion—If Life were assailed, appointing a punishment for that, so of Property, so

of Free-agency, adjusting too the titles to Property, in cases where it should be disputed—In all establishing their preservation, in all, ordaining their protection, or regulation.

And if the business of LAW, or Dictation was, to appoint penalties for the invasion of Civil rights, and to adjust their Titles, and of JUDGMENT, to enquire into such invasion, and Titles, so is it of EXECUTION to execute them, or to execute as for them—To execute the punishment ordained by LAW, to execute the possession also so ordained, when the Title is found to it—It cannot well be the execution of Law in any other way, for if LAW, appoint a punishment, or ordain possession in certain cases, what can the execution of the Law be, but to give it effect? The Law can have but a body, and a spirit, if we may so use the expression, and if that spirit, or meaning, be the Rule, or Dictation, or first Order itself, and JUDGMENT the finding out or discovering how it applies, what is there left for EXECUTION, but giving it body, and substance, so as to make it actually take place in reality?

This then is the mode, in which EXECUTION, or the EXECUTIVE Power touches Civil rights in their simple shape, as held to Individuals by INSTITUTES, now as to their more complicated, or aggregate—That shape, as we said, was the State, the shape in which Civil rights were embodied into a Community, or Nation, with power to protect them—In what manner then does EXECUTION act here?—Go to Law—What was the operation of LAW itself in this instance? It was to order MEASURES for the defence of that State (See Ch. XLIX. on LAW, p. 144) To provide for its within prosperity, or regulation—To take care, that it did not perish, or fall to decay, and weakness—The business of EXECUTION, or the EXECUTIVE Power then must be, to give effect to these MEASURES, to take care that they do not fall to the ground, for want of co-operation and assistance—In a word, to execute them. But how, as we said came in

In their aggregate by MEASURES.

JUDGMENT here? See last Chapter—Afterwards on a new Law, if the Measures were not executed, to judge those, who should have done so, and have neglected for their conduct—So then, do we also say of the EXECUTION here, it comes in again, upon that new Law, to execute the decisions of JUDGMENT, but of this afterwards.

In their aggregate again by REVIEW of POWERS.

The next shape is the POWERS—That was the next in which LAW touched Civil rights (see Ch. XLIX. p. 145) How then does EXECUTION come in here? If the POWERS, whose business is to judge and execute, that is, the JUDICIAL, and EXECUTIVE, should have neglected their duties, then there is a fresh Law to revise their conduct, always containing the old, else *ex post facto*, and if Judgment pass against them on this, then EXECUTION comes in to perform it. That is the business of EXECUTION in this instance.

In their aggregate again by ALTERATIONS of the CONSTITUTION.

The next, and last shape, is the CONSTITUTION, or Form of Government—Here, as we saw, it is the nature of human things to slide into decay, and the business of the LAW of the State, to repair it, as far as relative thereto—To amend any imperfections that may have originally existed in the fabric, or supply such defects, as may have crept in, from the lapse of time—In this case, it is the office of the EXECUTION, to accomplish such ALTERATIONS, in the first instance, and then, if it have neglected them, to perform the Judgment of the State, for such failure, and deficiency upon itself.

These extent of EXECUTION.

These are the provinces of the EXECUTION, or EXECUTIVE Power of the State, these are the modes, and forms, in which it touches Civil rights in their simple shape as held to Individuals, in their aggregate in the System of power raised to preserve them, in their aggregate again in the Powers that conduct, or compose that System, and in their aggregate still again, in the Machine, or fabric, that founds the whole

of the Structure—For these were the shapes, in which LAW touched them, see Chap. XLIX., by INSTITUTES, by MEASURES, by REVIEW of POWERS, and ALTERATIONS of the CONSTITUTION—These were also the shapes in which JUDGMENT touched them, seeing how these INSTITUTES applied, how these MEASURES had been executed, how these POWERS had discharged their functions, how these ALTERATIONS of the fabric, ordered, had been performed, ordaining the issue of Law upon them—These then, must be also the modes, in which EXECUTION touches them, executing that issue throughout, or rather, the Order of the State, or Law of, in all cases—These then are the modes, or shapes, in which EXECUTION touches Civil rights, these are the whole of its functions—This then, is the extent of EXECUTION—This is what is to be understood by it.

CHAP. LII.

WHAT IS INVOLVED BY THE LEGISLATIVE.

WE come now to what is involved by the Law, or Dictation of the State, and it deserves our principal attention, if that Law or Dictation should be, as we expect it will turn out to be, the anima, and $\psi\chi\eta$ of Government—We did hint at this in our 20th Chap. see ditto., and it is now that we shall attempt to develop the PRINCIPLE.

We there said, that all political power, or all the power of a State, was properly speaking, LEGISLATIVE, because it related either to the making of Laws, or the executing them, which widely speaking included their application—And we assigned, as a

What invol.
ved, &c.

All political
power LE.
GISLA.
TIVE.

reason for this, that it was the intention of every Law that it should be applied, and executed, indeed that such application and Execution, were in truth, no more than following out, and realizing it—And we adhere to the same notions—In great effect, though not in the specific nature of the POWERS, Law, or Dictation, is the idea of Montesquieu's circle (See Book II. Ch. II. and Book III. Ch. I.) which existed before the circle was drawn.

JUDICIAL
and EXECUTIVE
powers turned by
LEGISLATIVE.

And we adhere, we say, to the same notion of all power being LEGISLATIVE, because, though JUDGMENT, and EXECUTION, are undoubtedly distinct powers, and have a distinct weight in the Constitution of a State, and whether they had, or not have a distinct idea or essence in themselves, yet are these essences so inferior, so led, and committed, so guided, prescribed to, and turned about, by the Law or Dictation (always however acting within its own sphere) that it answers the same purpose almost, as if they were involved in it—And to be convinced of this, it will be necessary here to go a little into the theory of the POWERS, and see how they bear in their action, and tendency upon one another.

A rule,
IDEA.

And first as to Law, or Dictation—What is the idea of Dictation? A rule—And what is the idea of a rule? Something to walk by—Then this must be IDEA (Especially in the present case, a great PRINCIPLE, it must be greater than some other thing) else it is light, and not light, guidance, and not guidance, at the same time—And if the question be, whether this rule have been adhered to, it is a question of FACT—And if something be done adhering to it, it is another question of FACT.

Enquiring if
it have been
adhered to,
or adhering
to, FACT.

Notions
applied.

Now apply these notions to LAW, JUDGMENT, and EXECUTION—LAW, or DICTATION, is the rule, or guidance, always to be adhered to in every respect—JUDGMENT, is the seeing if it have been adhered to—And EXECUTION is the doing something adhering to it.

It is evident then, that LAW, or DICTATION must have what LAW, ever relates to IDEA, or PRINCIPLE, and JUDGMENT, or EXECUTION, whatever, to FACT, or CIRCUMSTANCES—The idea, must have IDEA, the guidance, the enlightening, must always be PRINCIPLE, it JUDGMENT, cannot otherwise than be, PRINCIPLE—The point whether that and EXECUTION, LAW, or Dictation have been adhered to, or adhering to it, must CIRCUMSTANCES, always be FACT, it cannot otherwise than be FACT, or CIRCUMSTANCES.

Try it through the DEPARTMENTS—What is LAW, or DICTATION in INSTITUTES? It is providing for Life, Property, and Free-agency, by instituting Penalties for their invasion, also, for the succession to Property, by instituting Titles to it—See whether LAW, or DICTATION have not PRINCIPLE here? If Life be taken, and LAW or DICTATION take no cognizance of the more, or less malignant mode, more, or less prejudicial to society, in which it is taken then all Murther, and Homicide would be the same, and the rule would be no rule at all—If it does, then come degrees of guilt, and IDEA, or PRINCIPLE along with them—If intentionally, with what intention, deliberate, or sudden and provoked, or self-defensive, or of unsound mind—All these are of PRINCIPLE, and belong to Dictation, because you cannot dictate, or guide properly, unless you dictate through—You cannot make a Dictation against Homicide, against a Crime, or in proportion to Crimes, unless you tell, what is a Crime, and what kinds of Crimes, nor apportion Punishments properly, unless you exhaust the subject in the same manner, that is, by the Crime, and degrees of Crime—And if you do this, you have all that relates to PRINCIPLE—The FACTS, whether the Crime so specified exist, or how exactly it should be punished, are no parts of the PRINCIPLE, therefore you can have the PRINCIPLE without them—The CIRCUMSTANCES do not interfere with it—As little does the PRINCIPLE interfere with the CIRCUMSTANCES, for the DICTATION has nothing to do with the

Tried
Through the
DEPART-
MENTS, in
INSTI-
TUTES.
Life, &c.
CRIMI-
NAL.

cognizance of the **FACTS**, which constitute the enquiry of **JUDGMENT**, nor the actual mode, or manner of performing, which makes the accomplishment of **EXECUTION**—It is evident then, that in providing against the invasion of Life, **DICTATION** has the **PRINCIPLE**, and **JUDGMENT**, and **EXECUTION**, the **CIRCUMSTANCES**—So in invasions of Property, and Free-agency, the same notions apply mutatis mutandis, with circumstances of atrocity, maltreating, irritation, insolence, and aggravation—So also correspondingly, in Contestations concerning Property—The **PRINCIPLE** is here, the Title to it—What should be the Title, else no Justice—

In Contestations concerning Property, CIVIL.

What has that to do, with the proofs, or the execution of the Title? That a son should succeed to his father, preferably, others according to more remote Propinquity, or Destination, or Acquisition, what has this to do with the proofs of that Propinquity, Destination, or Acquisition, or the actual putting in possession of the estate, when the Title is found to it? Nothing at all—Here then **LAW**, or **DICTATION** has the **PRINCIPLE**, and **JUDGMENT**, and **EXECUTION**, **CIRCUMSTANCES**, equally as in the other cases—So much for **INSTITUTES**.

In MEASURES.

Then again as to **MEASURES**—What does **LAW**, or **DICTATION**, what ought it to do here? Dictate the **MEASURE**—Give the Order—Then, dictate a new Law or Dictation, to be judged, and executed, that is, to have trial, and punishment, if the **MEASURE** be not executed—Here the Law, or Dictation for the **MEASURE**, is the **IDEA** for the **MANDATORY** execution in the first instance, and then the new Law with the old in it, for the **JUDGMENT**, and **EXECUTION** in the second—What have these original ideas to do, with the **MANDATORY** execution in the first case, or the proofs of non-execution, or actual enforcing of the punishment in the after one? They are all three, that is, the **MANDATORY** execution, and the proofs, and the after punishment, **FACTS**, and **CIRCUMSTANCES**, and to be done or proved by **FACTS** or **CIRCUM-**

STANCES—Law or Dictation, the original notion, has nothing to do with them—LAW or DICTATION then, has here also the PRINCIPLE, and JUDGMENT, and EXECUTION, the CIRCUMSTANCES.

So it is in a REVIEW of POWERS—This is a general cognizance, <sup>In RE-
VIEW of</sup> that the Law, or Dictation takes of the neglect, or abuse, which POWERS. JUDGMENT, or EXECUTION may have made generally, and substantially in exercising their functions—It must make a new Law for this, a Law, Rule, or Dictation, proceeding on the substance of the old, else as above mentioned, ex post facto—But it is a Law, Rule, or Dictation, an Idea to be compared with the conduct of these POWERS, and then punishment to take place accordingly, if they be found guilty upon it—Now what have this punishment, and this comparison to do, with the Rule, that is “WHAT the Rule lays “down,” all that is, or ought to be, consideration of Justice—If less, the DICTATION does not dictate what it ought to dictate, being the right, or wrong of conduct, to the parties, who are subject to it, if more, it goes beyond its province, because it is only to dictate that right, or wrong—Following then this, what has Dictation to do with the proofs of the conduct of these POWERS, of its squaring, or not squaring, with the Rules laid down, or the actual manner of executing the punishment, if they should be found guilty? Here then again, the PRINCIPLE belongs to DICTATION, and the CIRCUMSTANCES to JUDGMENT, and EXECUTION.

Last come ALTERATIONS of the CONSTITUTION—The <sup>In ALTER-
ATIONS of
the CON-
STITU-
TION.</sup> same notions apply here—There is the Order for executing the ALTERATION—That is the Rule—the ALTERATION must square with it—It must be executed—If not, JUDGMENT and EXECUTION must take place on a new Law, or Rule (of the substance of the old) for trying for not executing, and here also, the DICTATION all through, is the IDEA, or PRINCIPLE—First, for the execution of

the ALTERATION, in the first instance, and then, for trying for the non-execution of it, in the second, and the punishment following upon it—What have these original IDEAS to do with the manner of performing the ALTERATION in the first case, or the proof of non-performance, or the mode of executing the punishment?

Through the whole FOUR DEPARTMENTS, LAW has PRINCIPLE, JUDGMENT, and EXECUTION, CIRCUMSTANCES.

Here then, through the whole FOUR DEPARTMENTS, it is evident, that LAW, or DICTATION, has, and ought to have, the PRINCIPLE, and the JUDGMENT, and EXECUTION the CIRCUMSTANCES—And if LAW, or DICTATION have the PRINCIPLE, and JUDGMENT, and EXECUTION, the CIRCUMSTANCES, then must it much commit the JUDGMENT and EXECUTION—The PRINCIPLE, or rule which it gives, must much commit the JUDGMENT which is to judge by it—The punishment, possession, or measure which it names, must infinitely lead the EXECUTION, which is to perform it—In truth if PRINCIPLE be totally taken up, as it ought to be, by DICTATION, it leaves only considerations of mere FACT, or CIRCUMSTANCES to JUDGMENT, and EXECUTION, which is the narrowest ground (comparatively) possible—But has LAW, or DICTATION any more than this? Has it any of the POWERS of JUDGMENT, and EXECUTION? No—Not a grain, not an atom of them—It was observed, that JUDGMENT, and EXECUTION had each an essence of themselves—A complete abstract, or IDEA self-sufficient, and independent*—A Circle, to use the language of Montesquieu (see Book II. Ch. II. and Book III. Ch. I. notes) which was to be exemplified by the line that traced it, and that line was their actual exercise in practice—The Circle was the POWER—Here was the notion—Now does not every one see

* АТТАРКНЕ.

that this essence, that is, of the POWERS, is complete in itself? That they are the POWERS of JUDGING, and EXECUTING; of comparing the RULE, IDEA, PRINCIPLE, NOTION of the DICTATION, or "WHAT IS ENJOINED," with the subject of it, which is the POWER of JUDGING, and of executing the thing enjoined, which is the POWER of EXECUTING? Though they are lesser POWERS, much less, how infinitely, than that of framing, yet they are POWERS—They are a separate thing, a separate POWER, and a separate essence. Hath a ve the things, the absolute points, the objects of JUDGING, or EXECUTING, an IDEA to do with the IDEA itself, or framing the IDEA? They the JUDGMENT, and EXECUTION are much led by that IDEA, very much influenced, very much turned by it, almost as much, and yet a difference too, as if they were involved in it, so that LAW, or DICTATION, may be said to have the field, or what without LAW, or DICTATION, would be the field of them, but it has no more, it has not their ESSENCE, never can have their ESSENCE, never more than the first ESSENCE, nor has any thing to do with their ESSENCE—They are totally separate things—You might as well mix the IDEA of one with that of two, or any other incongruous notion—At the same time, they are much committed by the first ESSENCE, which leaves them so little room for their's, yet however without trespassing on its own limits—For if always what is PRINCIPLE, go into LAW, or DICTATION, and always what is CIRCUMSTANCE, into JUDGMENT, and EXECUTION, little will be left to JUDGMENT, and EXECUTION.

And this applies more strongly to EXECUTION—That is, performing, as we know, or accomplishing, the Law, or Dictation of the State—If the other POWER (JUDGMENT) compared the Law, or Dictation of it, with its subject, and told its reference to that subject, so does this (EXECUTION) execute that reference, and in most cases, the Law directly—Executes

in short, the Law, or Dictation in one way, or other—And if JUDGMENT was committed by the IDEA, which it had to compare with its subject, so is this more committed still, by its being (generally) a type of DICTATION, which is indeed the difference between JUDGMENT, and EXECUTION, that EXECUTION (generally) is a part of DICTATION, JUDGMENT is not—We can conceive a Law, or Dictation against a Crime, without JUDGMENT absolutely coming upon it, (except in a REVIEW of POWERS where JUDGMENT is the essence of the LAW, or DICTATION), it is no part of the IDEA, however it may have been attracted afterwards by the necessity of human affairs—It does not therefore contradict identity—But this is not the case with EXECUTION—It is as much a part of the DICTATION against a Crime, that it should be punished, as that it is forbid, and so through the DEPARTMENTS, (in Measures and ALTERATIONS of the CONSTITUTION EXECUTION is the whole of the DICTATION) we cannot conceive it without it, it is to conceive DICTATION, and not to conceive it at the same time—So far is EXECUTION more implicated in DICTATION, than JUDGMENT, in its general sense, not in its particular, it is there the POWER—It has the option of varying in degrees, the mode of its Execution, and this is the very particular Execution, contradistinguished from the general above, which constitutes the POWER—Without it, it would be none—EXECUTION then, is a separate POWER, though both it, and JUDGMENT are infinitely inferior to LAW, or DICTATION.

Great Superiority of Law by Reciprocation. Multiplies the POWERS into one another.

But the great Superiority which LAW, or DICTATION has, arises from the appropriate function it possesses, of drawing back JUDGMENT, and EXECUTION to their duty, whenever they have in the least deviated from it, and so bringing them into its measures, without in the least trespassing upon the integrity of the other POWERS—This function is that of repeating, reciprocating, and reverberating itself (if we may use the expression) through the DEPART-

MENTS, from one POWER to another—If for instance, JUDGMENT do not judge in INSTITUTES, then comes a Law, or Dictation, to overhaul it, and execution upon that Law, by EXECUTION—If EXECUTION does not execute in MEASURES, then comes a Law, or Dictation similarly to overhaul it, and Judgment upon that by the JUDGMENT—If JUDGMENT, and EXECUTION both fail generally, then a law for reviewing them both in REVIEW of POWERS, and JUDGMENT, and EXECUTION upon that—So in ALTERATIONS of the CONSTITUTION, a Law to overhaul non-execution, and Judgment upon that—So that wherever either JUDGMENT, or EXECUTION fail, the other is always ready to come upon it, prompted by the LAW, or DICTATION, and wherever one comes, the other must also, for JUDGMENT must always precede EXECUTION, and EXECUTION follow JUDGMENT.

It must be supposed what an amazing force, these two POWERS of JUDGMENT and EXECUTION must give to the LAW, or DICTATION, so multiplied and implicated into one another—Always at the nod of the LAW, or DICTATION, which has at any and at all times, the power of recalling them to their duty, when they have the least strayed from it, and so as we said, inducing into its measures—It may be imagined how immense this is, in the various DEPARTMENTS, whether the LAW, or DICTATION frame INSTITUTES, order MEASURES, REVIEW POWERS, or ALTER the CONSTITUTION.

Nay more, it may Multiply these POWERS into their multiplication, and that multiplication into itself, in infinitum, changing the very changes themselves, and multiplying multiplication into multiplication.

With this power, it must be seen, what LAW, or DICTATION is—It has so much the command of all, it is so infinitely, and multi-

Multiplies them into their Multiplication, and so in infinitum.

Aristotle's praise of Reasoning applies to it.

plicitly their Master, that what Aristotle says of the Superiority of the Art of Reasoning applies to it—"That whereas other Arts and Sciences are of their own particular subjects, this is of ALL, it includes ALL OTHERS; it is KATA ΠΑΝΤΩΝ."*

Such is the immense force given to LAW, or DICTATION by reciprocation, and it is this added to its particular faculties in the first instance, that amazingly confirms and strengthens it—For if it retain the field of, or what would be the field of JUDGMENT and EXECUTION, and have a correspondingly great influence, in consequence, it must be a great accession to this, that it can prevent the POWERS from straying from their duty.

This LAW.

This then, is the idea of LAW, or DICTATION, this its power in consequence, and this the confirmation of it by reciprocation, all which constitute it that great sweeping POWER, that MASS of INVOLUTION, which distinguishes it—So that it may be in truth called,

ANIMA
and ΨΥΧΗ of
GOVERN-
MENT.

the ANIMA, and ΨΥΧΗ of the State, the SOUL, and ESSENCE of GOVERNMENT—This is the involution of LAW, or DICTATION. Now for those of JUDGMENT and EXECUTION.

CHAP. LIII.

WHAT IS INVOLVED BY THE JUDICIAL.

Importance
to know, &c.

AND if the question was before, what was involved by the LAW, or DICTATION of the State, so is it now, what is involved by the

* Εστὼ δὲ ἡ ῥητορικὴ, δύναμις περὶ ἑκάστου τοῦ θεωρησαί το ἐνδεχόμενον πιθανόν· τούτου γὰρ οὐδεμίας ἰτερας ἐστὶ τέχνης ἔργον· τῶν γὰρ ἄλλων ἐκαστὴ ΠΕΡΙ ΤΟ Αὐτὴ, ὑποκειμένη ἐν διδασκαλικῇ καὶ πιστικῇ οἷον ἰατρικῇ περὶ ὑγιεινῶν καὶ νοσηρῶν καὶ γεωμετρικῇ περὶ τὰ συμβεβηκότα παρὰ τοῖς μεγέθεσι καὶ ἀριθμητικῇ περὶ ἀριθμῶν· ὁμοίως δὲ καὶ αἱ λοιπαὶ τῶν τέχνων καὶ ἐπιστημῶν· ἡ δὲ ῥητορικὴ, περὶ τοῦ δοθέντος, ὡς εἴπειν, δοκεῖ δύνασθαι θεωρεῖν τὸ πιθανόν· διὸ καὶ φάμεν αὐτὴν Οὐ ΠΕΡΙ ΤΙ ΓΕΝΟΥΣ ΙΔΙΟΝ ΑΦΩΡΙΣΜΕΝΟΝ ἔχειν τὸ τέχνηκον. ΑΡΙΣΤ. ΤΕΧ. ΡΗΤ. κεφ. β.

JUDGMENT, or DISCERNMENT of it—And if it was of importance before to know what was involved by the LAW, or DICTATION, because it turned the State (See Chap. LII.) so is it now what is involved by the JUDGMENT, or DISCERNMENT of it, because it has much influence in the State.

For it is easy to see from the general account that was given of Influence of JUDG-
LAW, JUDGMENT, and EXECUTION, in Chapters XLIX., L., and LI., that the influence of JUDGMENT must be, in proportion to that of LAW, or DICTATION—Not in any kind of equality or admeasurement, to be sure, but always in consideration to its own part, or share, or administration in the State, on LAW, on DICTATION.

For it was seen there, that LAW or DICTATION was the Law Rule, or Rule of the State, excluding will, so as to produce the governing of itself—And that JUDGMENT was the comparing this Rule or Law of the State, excluding will, where it was to be compared, that is, in JUDICIAL matters, with the subject submitted to it, and telling its reference to that subject.*

And we see now further, that this LAW, or DICTATION has the IDEA, or PRINCIPLE of the matter, submitted to it, and that JUDGMENT, and EXECUTION, have the FACTS, or CIRCUMSTANCES of it, each in its own way—(See last chapter) We know therefore what to think of the influence of JUDGMENT, as to how far it is inferior to that of LAW, and how far this shews superior, or involving, where it is superior, or involving, to that of EXECUTION, viz. in the JUDICIAL, or executing its own sentences, but of this afterwards.

And first in investigating the possession which JUDGMENT has of FACTS, or CIRCUMSTANCES, the question is, how it is con-

JUDG-
MENT tells
reference of
LAW, or
PRINCI-
PLE to

* TO YPON.

CIRCUMSTANCES. nected with, or relates to them—In what shape it has to do with how it refers to, or attaches to them—And here it may be said, that it takes cognizance of them—It enquires (where it acts at all) into the **PRINCIPLE** which the **LAW**, (or **DICTATION**) lays down, and sees how it applies, to these **FACTS**—It tells its reference to them—It is, where it acts at all, the middle step, between the **PRINCIPLE**, and it's **SUBJECT**, between the **RULE**, and the **FACT** which it applies to.

In all it's
colours, and
tendencies.

And how does it become this? How does it effect this situation, which makes it the middle step? It compares this **RULE**, **LIGHT**, or **PRINCIPLE**, this **GUIDANCE**, in all its shades, or tendencies, with the **SUBJECT** submitted to it, or **FACT**, in all its shades, colours, and tendencies, and tells its reference to it.

This great
through
Govern-
ment.
**INSTI-
TUTES**
Life—

It may be seen how far this goes taken through the whole compass of Government—Try it through the **DEPARTMENTS**—See what it (**JUDGMENT**) does in the first, viz. that of **INSTITUTES**—We saw (see Chapter on **LAW**, what involved by) that in the **INSTITUTE** for Life, it was a natural, necessary, and inevitable consideration, how that Life was invaded, whether with intention, because intention made the guilt, and consequently mischief of the thing, which taken through society, is in proportion to the design, embraced in a large sense—Again whether that intention was deliberate, or sudden, and provoked, or self-defensive, or of unsound mind (if it can be called intention)—If sudden, and provoked, it could not be so malicious—If self-defensive, it would be to abandon all right, that a man must give up his own Life, if of unsound mind, it would be to extinguish all Criminality, to make that Criminal, as far as Criminality arises from intention, since there could be no (proper) intention—It is the business then of **JUDGMENT**, to enquire into all these cases, and to see from the **FACTS**, and **CIRCUMSTANCES**, “whether the situation exist, that the **LAW** has in meaning,

“that it precisely states, and mentions”—And it is to be observed, that in going through these FACTS, or CIRCUMSTANCES, wherever any come in, or are admitted as proofs in the course of these things, they instantly become, or indeed were before, PRINCIPLES themselves, that is, minor PRINCIPLES, down to the very last—For whatever proves any thing, let it be ever so trivial, or seemingly barren, or insignificant, or disjointed a CIRCUMSTANCE, must be an IDEA, that is come under an IDEA, applying to the human species, in general, (generally speaking) else no proof,* and in that case JUDGMENT will have a great latitude, in choosing among the CIRCUMSTANCES, to take such as will infer the proof—For the proof, as we said above, depending upon such CIRCUMSTANCES, (again generally speaking) attaching to a number of persons, which CIRCUMSTANCES JUDGMENT has the privilege of connecting with these persons, or not, as it pleases, though it cannot alter the truth, it must thereby have a great latitude—And if any one doubt of the force of the proof depending upon CIRCUMSTANCES attaching to a number of persons, let them only regard the following—We shall suppose, that in an accusation for Murther, or intention deliberate in Life, a man had avowed malice, then it stands thus:

A man who avows malice intends:

This man avow'd malice;

Therefore he intended.

* There may be a person whose modes of acting, and speaking, are so different from those of other men, that the reasoning from his this or that, action will not apply to other men, so that there might be proof without it, but this is an extraordinary case, as that of Herod and Mariamne, there it might stand:

Wherever this man loves he kills:

This man loved;

Therefore he killed.

Or that he had declared he hated :

A man who hates, intends :

This man hated ;

Therefore he intended.

Who does not see that the proof of the intention deliberate, depends upon the minor of the syllogism attaching, or becoming a PRINCIPLE, so as to make all persons who hate deliberately intend, or all who avow malice deliberately intend? Where would be the hold without it? And so of the other cases of sudden, and provoked intention, self-defence, and unsound mind correspondingly—It is then a great province, to go through all these FACTS and variety of FACTS, and tell HOW FAR, or if at all, the LAW, or RULE of the State applies to them—What an extent of CIRCUMSTANCES, and qualification of CIRCUMSTANCES it embraces, what a latitude of IDEAS, and application of IDEAS, to these CIRCUMSTANCES—It is an immense field of probabilities, presumptions, certainties, so as to make one general certainty, human certainty collected from the whole—It is an amazing and expanded extent, an immense space, though not without a boundary.

Property.

The next case is Property, and it may be observed, that nearly the same ideas apply here, as in the invasion of Life. There is the same sweep of chusing amid a variety of FACTS, and colours of FACTS, and applications of LAW, and colours of application—To chuse among a variety of simple facts, to establish the actual doing of the thing, more or less serious, more or less seriously dressed, and to apply more, or less solid parts of the Law, more, or less intensely applying to them, so that the latitude of JUDGMENT is here almost as extensive, as in the former cases of Life, and Property.

Free-agency.

The next is Free-agency—The attacks upon this, are subjects of a different investigation—What shall be esteemed an attack upon Free-

agency? Free-agency is the enjoyment of the freedom of our actions.—The first attack upon this then, must be, what should put us under any durance, any kind of confinement, or constraint.—This invasion is less frequent, than any other in society, as nothing can be gained, generally speaking, by putting any one under constraint.—It does happen however that persons may be put under constraint, or deprived of their personal freedom in different shapes, and wherever it happens in any shape, the LAW makes, or ought to make heavy penalties for it.—And it is in selecting the circumstances of such constraint, dressing them up differently, applying different parts of Law, and more, or less, intensely, that appears the latitude of JUDGMENT.—It is further to be observed, that there is the same *malus animus* to be investigated here, as in the other cases of Life, and Property, the more, or less determined intention of constraint, with facts, and colours of facts, and applications of Law, and colours of application.—The scope therefore of JUDGMENT here, is nearly as wide as in the other cases.

The last case of INSTITUTES, is Contestations concerning Property, or what may be called Civil suits, or actions. And there is in these, at least a similar latitude, for JUDGMENT.—There is indeed almost the same scope for it, as in the first case of INSTITUTES, or Life.—Here Law tells the Title, or what makes the Title to the Property, as in the other case, the Crime, or what makes the Crime.—To make this Title, come Propinquity, Destination, or Acquisition, as in the other cases, design to constitute the Crime.—The one is the essence of the right, as the other is of the guilt.—And as in proof of intention, either deliberate, or sudden, and provoked, or self-defensive, or of unsound mind, come suitable corresponding circumstances to prove it, in the case of Life, so here come Legitimacy, Authenticity, (of deed) and marks of acquirement, to

Contestations
concerning
Property.
CIVIL.

AN
JULIUS

fix Propinquity, Destination, or Acquisition in this case of Property—Marching abreast all the way down—And in supporting Propinquity, Destination, or Acquisition, these suitable corresponding circumstances come all in as proofs depending upon a certain quality attaching to a certain description of persons—As for instance in Propinquity.

Whoever is born in his wedlock, has by Propinquity :

This man was born in his wedlock ;

Therefore he has by Propinquity.

Or in Destination :

Whoever has by a deed written with his own hand, has by Desti-

nation :

This man has by a deed written with his own hand ;

Therefore he has by Destination.

And so of the remaining case Acquisition :

Whoever gets a thing by exclusive labour, has by Acquisition :

This man got by exclusive labour ;

Therefore he has by Acquisition.

Proofs both
in CRIMI-
NAL and
CIVIL.

—Thus then do the proofs answer all through—And it is evident that JUDGMENT has a great latitude down through the PRINCIPLES, that is, CIRCUMSTANCES making minor PRINCIPLES all the way, successively applying them to persons, and connecting with, in infinitum, till they are exhausted, so that it has constantly a force, corresponding to that of LAW, expanding as the interpretation of PRINCIPLES expands, and contracting as it is contracted—It is needless to observe, that the power of JUDGMENT, must be, thus, as extensive here, or in this case of INSTITUTES, viz. Contestations concerning Property, as in the others.

MEA-
SURES.

The next DEPARTMENT is MEASURES—This is a MANDATORY, not a JUDICIAL DEPARTMENT—It is not as in the

former DEPARTMENT of INSTITUTES, a passive Law, or ordinance, as we may call it, a rule for certain predicaments, but which must wait for those predicaments, to be called forth into operation, it is an active command to execute, or do something for the benefit, or behoof, or prosperity of the State, which must be directly—Then, if that be not executed, or done, comes a new Law (of the substance of the old, else ex post facto, or trying by a Law not made at the time) prescribing the points, by which the EXECUTION of the State, is to be judged for not executing—And here it may be subject of enquiry, how far those syllogisms enter, which include the application of CIRCUMSTANCES, and thereby make minor PRINCIPLES, as in the former DEPARTMENT of INSTITUTES—For instance, in judging on an Order, that is, on not executing an Order to attack a place, or shut up an enemy's harbour, the Syllogism might stand :

Every man who does not do his utmost to execute the Order of the State, is liable to penalties:

This man did not do his utmost to execute the Order of the State;

Therefore he is liable to penalties.

Or in an Order to conclude a peace as Commissioner, or Generalissimo:

Every man who does not do his utmost to execute the Order of the State, is liable to penalties:

This man being ordered to conclude a peace, and carrying on war, did not do his utmost to execute the Order of the State;

Therefore he is liable to penalties.

Or in internal affairs, in an Order to suppress a riot:

Every man who does not do his utmost to execute the Order of the State, is liable to penalties:

This man being ordered to suppress a riot, and not endeavouring to do it, did not do his utmost to execute the order of the State;

Therefore he is liable to penalties.

And then come the penalties upon the new Law for judging for not executing this Order, which is not ex post facto, it being understood, or right reasonable, to be understood, that these penalties, or such like, ought always to be inflicted—Only the order for original execution must be incorporated into the new Law, which prevents it from being ex post facto, or judging by a Law, not made at the time, which must never be, indeed the safest would be to transcribe the old Law for MANDATORY execution into the new for judging, and then see whether it was such as the first Order demanded—This is what the JUDGMENT is to do—But in doing this, what a variety of CIRCUMSTANCES, and QUALIFICATIONS of CIRCUMSTANCES, and APPLICATIONS of Law, and COLOURS of APPLICATION are to be made, in introducing the minor PRINCIPLES! It being to be observed further, that the EXECUTION is not a single person, nor has the command of single persons, so as to be like an Individual, but a collective body, or may employ collective bodies, so that it may be thrown into very different situations from Individuals, in all of which, it must be considered independently—When we reflect on this, we see what a latitude JUDGMENT has in this DEPARTMENT.

REVIEW
of POW-
ERS.

The next DEPARTMENT is the REVIEW of POWERS, which is more extensive still—It is here that JUDGMENT develops its whole force, it is here that it displays, and expands its whole magnitude—This DEPARTMENT is entirely JUDICIAL—It is expressly to REVIEW the POWERS, that is its object, and essence—It is that force of the LAW of the State, which recalls the POWERS to their duty, when they have deviated from it—It is by consequence, the chief Law in the State, and by the same consequence, the chiefest force of JUDGMENT, to judge that Law—And it is to be observed

further, that this REVIEW of POWERS, is not a REVIEW of a single Judgment, or a single Execution, or of a whole mass of Judgment, or a whole mass of Execution, of either properly and exclusively, but of both jointly, and indifferently—And in REVIEWING JUDGMENT, it is for corruption or contumacy, and in REVIEWING EXECUTION, for remissness, relaxation, treachery, or dereliction. And in REVIEWING JUDGMENT, it is to be observed, that every thing relating to JUDICIAL, or JUDGING how a thing is, is to be considered, and in REVIEWING EXECUTION, every thing that relates to MANDATORY, or ACCOMPLISHING what is ordered—And in this way, simple JUDGMENT, having only one DEPARTMENT, viz. INSTITUTES, in which it judges, or tries causes, and EXECUTION, three, INSTITUTES (executing JUDICIAL decisions) MEASURES, and ALTERATIONS of the CONSTITUTION, so the REVIEW has only one DEPARTMENT to try JUDGMENT in, in trying EXECUTION, it has three—Further, it is equally a Criminal trial (loosely speaking, for all is Civil in a large sense) whether a POWER be judged, or an Individual, the only difference, and that a great one, is, in extent of circumstances, though not in the essence, of the POWER, that it is a collective body, instead of an Individual.

Knowing then these general lines of distinction, we know what to do—We know what opinion to form, of the function of the REVIEW, in trying either JUDGMENT or EXECUTION—It has to consider the CIRCUMSTANCES, which JUDGMENT judged on, the more, ^{Judging} JUDG-
or less, whether they were properly selected, and enhanced, also the AP-
PLICATION of the PRINCIPLES of the LAW, which JUDG-
MENT made, whether it was that which the subject demanded, and
whether it was properly heightened, or not—And here, whether we
apply a Principle to a Subject, or judge of the application of a Prin-

ciple to a Subject, it is the same thing, because in both cases we measure the Principle by the Subject—As for instance :

Whoever deliberately intends, murders :

This man deliberately intended ;

Therefore he murdered.

But the process is longer, because we admit a third term—It is not our own opinion, that we compare with the Subject, but the opinion of another person, which must answer ours, and which indeed comes to the same thing in the end, but the process, as we say, is longer—This then is the business of REVIEW, in judging JUDGMENT, to take in all the CIRCUMSTANCES, on which it judged, and APPLY the old law to them, to see if it answers our ideas—And here what a range is there, for besides that there are all the FACTS, and Variations of FACTS, and APPLICATIONS of Law, and colours of APPLICATION, that there were before, repeated over again, as in a mirror, there is the situation in which the POWER judged, to be considered—And the REVIEW is further bound above all, not to adhibit a novel choice of Facts, nor novel views of Facts, nor novel Applications of Law, nor novel Views of Application (new constructions, or new colours, either of the Law, or Fact) but such as may have arisen, or be supposed to have arisen, in the mind of any one—In INSTITUTES, in attacks on Life, to see if the intention deliberate, or sudden, and provoked or self-defensive, or of unsound mind (if it can be called intention) be properly proved, if Facts be properly chosen, and coloured, (their lawful degrees given them) and parts of law properly taken, and applied—So in attacks on Property, so in attacks on Free-agency, CRIMINAL, so correspondingly is Contestations concerning Property, CIVIL, if Propinquity, Destination, or Acquisition be properly judged on, as supporting Titles, being themselves supported by Legitimacy, Authenticity, and Marks of Acquirement—This upon INSTITUTES, for

CRIMI-
NAL.

CIVIL.

INSTITUTES only come into simple JUDGMENT, or in the first instance, the other DEPARTMENTS being either double, as this REVIEW, or appropriated to EXECUTION, like MEASURES and ALTERATIONS of the CONSTITUTION—So far for REVIEW of JUDGMENT—Now as to that of EXECUTION—And ^{Judging} here it may be said, that it is of a very different, or rather what may ^{EXECU-} be called a corresponding, or analogous nature, in its own kind—And ^{TION} if JUDGMENT be tried for contumacy, or corruption, so is EXE- ^{MANDA-} CUTION, for contumacy, remissness, treachery or dereliction—And if JUDGMENT simple be tried in INSTITUTES, so is EXE- CUTION, simple, in INSTITUTES, MEASURES, and ALTE- RATIONS of the CONSTITUTION—In INSTITUTES, as exe- cuting JUDICIAL decisions, in MEASURES, executing the Orders of the State, or Law of (as indeed in all) in ALTERATIONS of the CONSTITUTION, the same—In all therefore, MANDATORI- LY, or doing what it is ordered to accomplish, JUDICIALLY, or of JUDGMENT, being to examine, or see, or judge how a thing stands—And being this MANDATORY EXECUTION, it takes a colour from it, and so does its REVIEW—In JUDICIAL decisions (executing in INSTITUTES,) it is so peremptory, that it admits not of almost any qualification, or variation—But in MEASURES, it is a very different thing—There, are to be considered all the crisis', conjunctures, emergen- cies, situations, facilities, obstacles, difficulties, dangers, necessities, into which it may be thrown, and which necessarily call for a certain exertion of prudence, and moral agency, all in their own way, and all to be qualified in a certain degree, by CIRCUMSTANCES—Add to this that it is a collective force, and operating through the medium of collec- tive forces, all which make additional shades, in the degree of energy to be expected from intermediate agency—The same in a great de- gree of ALTERATIONS of the CONSTITUTION as to facilities,

obstacles, difficulties, situations, and forces, how far accomplishable, indeed much more so, but this is almost in the clouds—All we can say, of this part of REVIEW, is, that these are the PRINCIPLES, or hints at PRINCIPLES, for discerning it—And of all parts of REVIEW, that the same FACTS, and selection of FACTS, both JUDICIAL, and MANDATORY, and APPLICATIONS of law, and colours of APPLICATION, return over again, always on the old law, repeated in the new, as in a mirror, with the same syllogisms for their operation—And it may be further added, that these same PRINCIPLES will apply to a REVIEW of REVIEW, if the REVIEWING POWERS themselves should fail, as noticed before, and so on, in infinitum.

ALTER-
ATIONS of
the CON-
STITU-
TION.

The next is ALTERATIONS of the CONSTITUTION. JUDGMENT, as we said, has no force in the first instance, in this DEPARTMENT—It belongs entirely to the EXECUTION of the State—But it has afterwards, in the second, or REVIEW—It there comes in, as in MEASURES, it is to judge by similar facilities, difficulties, obstacles, emergencies, crisis, conjunctures, and situations, as enumerated above (indeed more) therefore unnecessary to mention here.

This the
sweep of
JUDG-
MENT, &c.

This is the extent of JUDGMENT in REVIEW of POWERS, this the sweep of its force in INSTITUTES, MEASURES, this REVIEW, and ALTERATIONS of the Constitution—It may be seen what a latitude it embraces, in going through these DEPARTMENTS, in all the different FACTS, and colours of FACTS, both JUDICIAL and MANDATORY, that occur, with all the various APPLICATIONS, and colours of APPLICATION of Law that may be attached, and this more, or less, according to the capacity of the DEPARTMENT!!!

JUDG-
MENT in-

And if JUDGMENT go through these DEPARTMENTS, as above,

it must be obvious, that it involves the EXECUTION of the State, through all of them, in its own branch, the JUDICIAL.—But some of the DEPARTMENTS, it will be said, are JUDICIAL, and some of them MANDATORY, how then can it have any thing to do in the MANDATORY, where it has avowedly no intervention. This is very true, and neither has it in the first instance—But there are two instances of the DEPARTMENTS, one the simple, where it has its own nature, and another, where the JUDICIAL comes in upon it, or rather creates a new DEPARTMENT, trying it in its own branch, as an INSTITUTE, for such must all REVIEWS be, whether of INSTITUTES, MEASURES, REVIEW of POWERS, or ALTERATIONS of the CONSTITUTION. They are all of the nature of CRIMINAL INSTITUTES, therefore all JUDICIAL, for if it be for a wrong Judgment in INSTITUTES, there is an implied prohibition to wrong judge, with the punishment following afterwards, and so correspondingly through the other DEPARTMENTS—JUDGMENT then involves JUDICIAL EXECUTION through the whole DEPARTMENTS—The application of the punishment, where it is a CRIMINAL question, the application of the possession, where it is a CIVIL. But it must be observed again, that it is only the general EXECUTION—The particular or detail, is the POWER.

General not particular.

This then is the sweep of JUDGMENT, or the JUDICIAL—But if JUDGMENT have its Latitudes, it has its Limits too—It is bounded by LAW, or the LEGISLATIVE, inasmuch as that LAW, or LEGISLATIVE has the PRINCIPLE, and JUDGMENT, only the application of the PRINCIPLE to Facts, or CIRCUMSTANCES—But here it may be said, that this very thing implies a great power, and greater even than that of LAW in this respect, inasmuch as that almost all the disputes among men, are concerning the application of PRINCIPLES, every one agreeing that it is FIT to do RIGHT, and NOT FIT to do WRONG, but the question always returning, what is RIGHT or WRONG? And so it would imply a great

If JUDGMENT have Latitudes, has it's Limits too.

LAW ap-
plies FIRST
PRINCI-
PLES in IN-
STITUTES
—CRIMI-
NAL.

power, and greater even than that of LAW in this point, if LAW merely did this—If LAW only fixed the GREAT PRINCIPLES, and left JUDGMENT to apply them—But LAW does not do this—It descends into the Minor application—It takes them into its own hands, to a certain degree, so far tying up JUDGMENT—As for instance in the case of Murther, it does not legislate against Wrong generally, and then leave JUDGMENT to determine what that Wrong is—No, it goes into the subject, and says, that Murther is Wrong—Nay, it interferes a second time, and says that Murther is Deliberate intention—And so in the other cases of Culpable Homicide, Self-Defence, Unsound mind, &c., always telling the GREAT PRINCIPLE, and applying it, sometimes two or three changes down—And if LAW, or LEGISLATIVE do this, then there must be a very small latitude, comparatively speaking, left to JUDGMENT, merely that of determining whether the PRINCIPLE, so narrowed apply to the CIRCUMSTANCES, whether there be this Deliberate intention in Murther, this Sudden and provoked in Culpable homicide, &c. &c. &c.—Always seeing whether the Principle so narrowed apply, and whether the Crime defined by LAW, exist in the CRIMINAL.

CIVIL.

And so parallelly in the CIVIL, going through all the cases of Property—Seeing if the Title defined by Law exist, how far it is to be gathered out of the CIRCUMSTANCES. Whether this man be the next of Kin, whether he have got the estate Destined to him, whether he have Acquired himself, Propinquity, Destination, and Acquisition, being the whole Titles to among men, Property—And this Title is to be collected from the CIRCUMSTANCES, as in the other case, or CRIMINAL, the intention—The one as we said, being the essence of the Right, as the other is, of the Crime.

In MEASURES.

MEASURES are the next thing, and the same observations apply parallelly here, LAW has the IDEA, or PRINCIPLE—It names the Order for the MEASURE in the first instance, and then the

Rule for trying for it, in the second—It does not leave the interpretation of RIGHT, or WRONG to the most rigid or lax, of what shall be or not be a pardonable disobedience of the Laws, but the Law itself is the Regulator—That goes down into the distinctions, that descends into all the necessary specifications.

So in REVIEW of POWERS parallelly, in trying either JUDGMENT, or EXECUTION—LAW or LEGISLATIVE lays down the rules for trying JUDGMENT, LAW or LEGISLATIVE lays down the rules for trying EXECUTION—These are the JUDICIAL, or MANDATORY, Laws—The JUDICIAL either CRIMINAL, or CIVIL in REVIEWING JUDGMENT, the MANDATORY, either expressed or implied, in trying EXECUTION—But in no case does it leave to the discretion of the REVIEW, to determine what shall be proper, or improper conduct in the POWERS—The consideration of that, it takes into its own hands, and its decisions are to be known by the Laws above mentioned.

So in ALTERATIONS of the CONSTITUTION—As this is only a Measure of another kind, the same ideas apply here as in MEASURES—The same latitude for JUDGMENT by the CIRCUMSTANCES, the same limits by restricting the PRINCIPLES.

Such are the restrictions upon JUDGMENT from the LEGISLATIVE, and such the manner in which it ties it up, always applying PRINCIPLES, always vindicating to itself, in the higher degrees, and so leaving nothing to JUDGMENT, but CIRCUMSTANCES, which are in truth, its proper Province.

But we ought to be cautious in limiting JUDGMENT, on the Application, lest we should limit it too far—It is very true, that LAW, narrowing and applying these PRINCIPLES, is very different from leaving them in their full latitude to JUDGMENT, but it is equally true, that even in these Applications, so narrowed, there is a variety, as different from any idea of implicitness, or implication—A discretion as

distant from peremptory dictation—What do we say in all these, of the different FACTS, that may occur, and the different constructions that may be put upon them? Of the various manner of chusing, and when chosen, of extending Law towards them? Of receiving in all their shades, and of embracing through Law, with all the versatility of Application? Of representing in CRIMINAL, the Crime with greater force, in Civil, the Claims with more solidity? In both cases, selecting such FACTS, as it pleases, and turning into what tendency, with all the powers of argument? In the MANDATORY, picking out what it likes, for trying EXECUTION, in the JUDICIAL, what it chuses, for arraiging JUDGMENT? And this, through the whole DEPARTMENTS, JUDICIAL in INSTITUTES, MANDATORY in MEASURES, both in REVIEW of POWERS, and the last PRINCIPLES of GOVERNMENT, in ALTERATIONS of the CONSTITUTION.

Great range. But the great range of JUDGMENT possibly, and politically to be supposed, is in the REVIEW of REVIEW of the POWERS, in infinitum—It was, as we saw, the principal force of LAW, (see last Chapter) to reciprocate, and reverberate these POWERS upon one another—It must then be the principal corresponding force of JUDGMENT, to judge that Law—To judge in all its tendencies, corresponding in these multiplications.

Whatever
CRIMI-
NAL,
CIVIL, or
POLITI-
CAL, subject
of.

But one thing is clear, that whatever Crimes are agitated in the State, whatever Controversies concerning Property, whatever Abuses, or Neglects of Duty, whatever high Flagrancies, or Misdemeanors, whatever Malversations, Delinquencies, Misbehaviours, Disorders, or Derangements, of any kind; whether PUBLIC, or PRIVATE, CIVIL or POLITICAL, COMMON, or INDIVIDUAL, must all come under the Cognizance of JUDGMENT, therefore with the scope of mind, or intellect to be exercised, its Latitude must be most extensive—What FACTS, and CIRCUMSTANCES, in INSTITUTES!

What CASUALTIES, and CRISIS in MEASURES! What SITUATIONS, and COLOURS of SITUATION in REVIEW of POWERS! What PRINCIPLES of GOVERNMENT, and HIGH INTERESTS, in ALTERATIONS of the CONSTITUTION!

From this view of the subject, steering equally through every province, it may be seen what a force JUDGMENT possesses—No Bounds but what LAW sets, no Limits, but what the superior range of LEGISLATION puts to it!

And it may be seen from this, that it commands the Collective Guilt of the State, that it holds in its hands also, the Appropriation of its Stock, and Substance—No Crime can arise, that it does not judge, no Property can spring up, that it does not distribute.

Commands
Guilt, and
Property of
State.

This then is the sweep of its force, in INSTITUTES, MEASURES, REVIEW of POWERS, and ALTERATIONS of the CONSTITUTION—either Present, as it may be termed, or Reflective—Either tendering its decision direct, where the nature of things requires, or ultimate, as the POWERS call, above presented.

This JUDG-
MENT.

It must be preserved from this, what the POWER is, its Latitude, its Essence, and its Boundaries—It is the Guardian of the State, under another, and most Superior, the LEGISLATIVE, brooding over and protecting, the Laws of it—In the peaceable and passive scenes of GOVERNMENT, constantly, and necessarily operating, in the warlike, and alert, always capable of being called into vigour, and effect, if Present, considerable, if Future more so, and the more, the more so!

CHAP. LIV.

WHAT IS INVOLVED BY THE EXECUTIVE.

POLITI-
CAL
FORCE of
State.

AND here it is to be observed, that CIVIL rights appear in a new shape—It is no longer in the PRINCIPLES of LEGISLATION—It is no longer in the APPLICATIONS of JUDGMENT—It is in the MASS of PUBLIC FORCE collected to act for, and preserve them.

Makes
LAW take
place.

And if CIVIL rights appear here in a new shape, so do they also, in the operations, that that shape exhibits—EXECUTION is not like LAW, in any particular—It is not like JUDGMENT—It does not, like the former, Contrive in profound speculation, what is most expedient for the State*—It does not, like the latter, Apply these Speculations—But it Gives, what has been already Designed, or Applied, its body, and effect, it makes it take place in reality, and action.

Manifest.

Neither does it proceed in the same manner—If the things that it does, are different, so is its mode of doing them—It does not like the LEGISLATIVE, advance with a silent, but all powerful step, seen only by its effects, known only by its consequences—Neither does it wind through the State, like the JUDICIAL, certainly with potent, yet insensible, and imperceptible, sinuations—But it appears open, manifest, and bold—Decided, manful, and manly—Avowed and declared to all, and where it is not avowed, and declared to all, it is not EXECUTION.

Yet not
marking
CIVIL
RIGHTS
always.

But most curious it is, that being the MASS of FORCE erected for the Preservation of CIVIL rights, it is in many cases, a less obvious, and

* TO ΕΥΜΦΕΡΟΝ ΤΗ ΠΟΛΕΙ.

prominent, manifestation of them—All are aware, that a Citizen is protected, when a Law is made against Murther, or a Criminal tried for it—All also see that similar protection is afforded, when a Provision is enacted for regulating Property, or a Sentence pronounced in a CIVIL suit. But who contemplates when an Army marches, that it is for the protection of CIVIL rights? And yet as was well observed by Hume, noticed before, Armies, Forces, and Fleets, Treaties, Alliances, and Ambassadors, Legislatures, and all the vast APPARATUS of GOVERNMENT, are only to support the TWELVE JUDGES!

And this is in truth, the great END of all—It is only to protect LIFE, PROPERTY, and FREE-AGENCY, that GOVERNMENT was ever instituted—It is for THOSE OBJECTS, which but for the CRIMES of his FELLOWS, Man might have enjoyed in a Pastoral state—The Splendour of a Crown ends only in the Attainments of Peace, the Din of Arms, in the Tranquillity of the Cottage.

Such then being the case, that all is for the Protection of CIVIL RIGHTS—That these, as we saw, are the α and ω of Government, (see Chap. X.) let us enquire how the EXECUTIVE does preserve them? What mite it contributes to the common stock of Protection, what share it takes, in the General System for preserving them? How EXECUTIVE protects them?

And here the mode will be, as with the other POWERS, to go through the DEPARTMENTS—To follow in its Latitudes, its Limits, its Qualifications on those Limits, and its Range through them—As to LAW, that had no Limits—It itself determined the Limits of GOVERNMENT—It was GOVERNMENT—But JUDGMENT we can investigate better—That had its limits, &c. &c.—Let us then follow it. Go through the DEPARTMENTS.

Taking up then EXECUTION, in INSTITUTES, the first DEPARTMENT, what do we find? How does it appear there? We find it executing JUDICIAL decisions—Executing the Sentences of In INSTITUTES.

JUDGMENT, either CRIMINAL or CIVIL—Here then the Execution being so well defined, it has little Latitude—But it has one—It may execute the Sentences in both Kinds with greater, or less rigour.

In MEASURES.

But it is in MEASURES, that it displays its great force—These are its peculiar reign, these are its proper Province—MEASURES are to it, exactly what INSTITUTES, and REVIEW were to JUDGMENT—As they were JUDICIAL, these are MANDATORY—And as JUDGMENT could never come into the latter, till EXECUTION had preceded, so EXECUTION can never enter the former; till after JUDGMENT.

External.

And MEASURES being a PRINCIPAL DEPARTMENT to EXECUTION, the question is, how it takes them, how it acts in them? And here, it will be natural to examine, what is necessary to maintain a State? To preserve it? To preserve this System, which is itself to preserve CIVIL rights—The first thing will be, to guard it against Foreign Enemies—And here it is to be observed, that all Nations, when constituted within their own Limits, are in the nature of INDIVIDUALS in private Society—They must not be attacked—And it is, along with other things, to enable them to resist such attacks, that is erected, a PUBLIC FORCE—Now EXECUTION is to manage it, and how?—When LAW, or LEGISLATIVE decrees what the defence is to be, for all proceeds from it, (see Ch. XLIX.) EXECUTION is to execute it—When LAW decrees a Naval, or Military Enterprize, or Naval, or Military MEASURES, according to the situation of the Country, EXECUTION, or the EXECUTIVE, is to direct them—And here, what a Mass of Action there is in Armies, Forces, Fleets, and Latitude of course in managing them! It will often happen that the very Salvation of the State is in the hands of the EXECUTIVE—Do we remember Themistocles at the battle of Salamis which saved Greece? Camillus at Rome, when he rescued it

from the Gauls, with many other instances? Is this then no latitude? Is this no discretion? Not to talk of those minor circumstances, and emergencies, which though inferior, may be the ruin of whole Fleets, and Armies? Countries, friendly, or hostile, as Xenophon experienced on his return from the expedition of Cyrus,* barren deserts to pass, mountains to overcome, landing of troops, tides, winds, seasons, with a long &c. of casualties—Do these involve no prudence? Do these require no discretion? Do these imply no latitude? These then, are the External of MEASURES, for EXECUTION—But are there not also Internal? We know if a State be attacked by Foreign enemies, ^{Internal.} it may also be by Domestic—And is it not the prime object of the EXECUTIVE, its very essence, to put down these? What is it good for but to support its Parent? Here then again, it must march its troops, and protect CIVIL rights in their own shape—Here again, the salvation of the Empire, is every moment in its hands—The fate of the Widow, the Infant, or the Orphan, against some sanguinary and remorseless Tyrant, who perhaps would glut his vengeance in the bowels of his own country! And is this no small commission? Is this no office of moment? It is a latitude most immense, involving in its circle, the tears, lamentations, and wishes of the distressed!—The fears, fortunes, and hopes of the Country!

But this is only Treason—This is only internal Rebellion—Are there not internal Seditions also? Immediately classing under the former, which though not so imminently mischievous, are nevertheless productive of much tumult to the country--It is the business of the EXECUTION then, to suppress these—And as in the other case, the most frantic madness, right often stood upon the limits of the most consummate prudence, from varying conjunctures, so here, the most delicate forbearance, may deviate often into the greatest eventual cruelty—And what rules

* See ANABASIS.

will regulate this? Would you have instructions? As well might you file the most capriciously winding cavern with a rod of iron, as well might you regulate a vessel across the Atlantic, with specific Navigations—These Navigations, these Instructions must be the discretion of your Admirals, and Commanders!

But who can seize the features of a POWER, which is Action itself, which is variation in Mobility, and motion?—Not to mention inferior things—Not to name Taxes, Police, and a thousand subordinate considerations with the same Mobility in miniature, these very variations in minor exemplification!

REVIEW of
POWERS.

The next DEPARTMENT is REVIEW—It is here, as we saw, that the POWERS are tried for swerving from their duty, and it is here, that EXECUTION must execute the behests of JUDGMENT—This is a very different object—A widely varying task from punishing Individuals—It is here the whole force of a POWER, that is to be subdued, for EXECUTION, never has to act but upon a POWER, it is always a POWER to be judged that has transgressed, always a POWER, that is to be punished.

And it is this feature of REVIEW, that distinguishes it, and in truth, makes a larger species of INSTITUTES—The same process is undergone, the same variations occur, with this difference only, that it is a POWER judged, instead of an Individual—Accusation, evidence, defence, sentence—And EXECUTION, to execute that sentence! Now what a high and Imperial Office! Do we not recollect what forces each POWER has to protect it? We must do this before we can appreciate the EXECUTION—Take then the JUDICIAL, that is the first to be tried—What does that do? It may be JUDICIAL, either Foreign, or Domestic—In the former, it may be a whole Continent that must be subjugated, a Governor with all its forces to support him—In the latter, a beloved Judge, with all the strength of Provincial attachment to defend him—What are you to do here? How are you to bring them to justice?—By the

EXECUTIVE—Exactly like an Individual, who is become amenable to the Laws—But it requires much more coercion, much more, how infinitely more, effort, and exertion!—Then again, as to the **EXECUTION**, how do you manage that? That also may be External, or Internal—External, as before observed, it may have the whole force of an Empire to protect it—Witness the calling the Satraps of Persia to account, which was always a Rebellion—So also the Bashaws of Turkey, in modern times, for such are the features of bringing External **EXECUTIVES** to justice? Then again as to Internal—What do we say of that? Who shall try the Internal **EXECUTION** of a State? It may be done if a petty Officer have transgressed, but how to effect it when it is the **EXECUTIVE** of a whole country?—A singular instance occurred of this in England, in the year 1688, when James II. abdicated the throne. He was the **POWER** judged, the Convention Parliament the **POWER** that judged, and William III. the **POWER** that executed.

Such are the features of **EXECUTION** in **REVIEW** of **POWERS**, we now come to **ALTERATIONS** of the **CONSTITUTION**—And here, if the last Principles of Government came in question for **JUDGMENT**, so do the last resources of it, into contest for **EXECUTION**—How are you to execute these? Petty details of Government may be easily changed, but how are you to reverse whole **CONSTITUTIONS**? For it may happen that the **LEGISLATURE** of a Country may have decreed this, and if it should so, who shall dare to gainsay it? The **LEGISLATIVE** of every country is its Omnipotence, or represents it—But it may be, that there may be refractory members of the Empire—If then, the **EXECUTION** have to subdue these, it has to put down another Rebellion—And what a latitude is here? For besides that, the same Crisis, emergencies, situations, &c. occur over again, as in **MEASURES**, for **ALTERATIONS** are only **MEASURES** of a superior kind, there are these

Crisis' multiplied with tenfold, nay, a hundred fold more precariousness, and importance—When we consider these things resisting Nations, confounded rights, contradicted patriotism, its latitude almost loses itself in the clouds, its magnitude disappears in an infinity of discretion!

If latitudes
has its limits
too.

But if EXECUTION, like JUDGMENT, have its latitudes, it has its limits too—LAW, or LEGISLATIVE, that great force lies behind it, always ready to come forth, and draw back to its duty—Constantly regulating and directing, but above all, by RESPONSIBILITY, controuling—It is this feature, that characterizes LEGITIMATE GOVERNMENT, and distinguishes from what is Arbitrary, and Despotic—There is nothing that a Tyrant hates so much, as the very name of being ACCOUNTABLE,* be he KING, NOBILITY, or PEOPLE—That then the Public force of the State must be, else it is a Constitutional Anomala—And it is this RESPONSIBILITY, that lies upon EXECUTION, and renders what would otherwise be incomprehensible, a malleable, and sociable POWER in the State—Always lying with its relation to the LEGISLATIVE, whether near, or at a distance, it is governed, as we may call it, by the Polarity of LEGITIMATE GOVERNMENT. The Magnet we see, whatever its vacillations, whatever its apparent aberrations from its point, is always regulated by its internal propensities,—So the EXECUTIVE, Whatever the grandeur of its force, whatever the extent of its discretion, that discretion is ever subject to the eternal, humanly talking, rules of LEGISLATIVE REGULATION—What we said of LAW in another place, applies here, in a different exemplification—As the fixture of it, was let loose by the discretions of REASON,† so is the looseness of this fixed, by the Restrictions of LEGISLATIVE PRESCRIPTION—If it be INSTITUTES, LAW dictates the Punishment,

In INSTI-
TUTES.

* ΤΗΕΥΘΥΝΟΣ. See Demost. Περὶ Στεφ.

† See Chap. XII.

names the Possession—If it be MEASURES, it tells it to what cli- — MEA-
 mates it is to go, what forces it is to vanquish—If it be REVIEW of — SURES.
 POWERS, it declares what Retribution it demands, what Penalty — RE-
 it is to inflict—If it be ALTERATIONS of the CONSTITU- — VIEW of
 TION, what seas it is to sail in, what Oceans it is to navigate. — POWERS. -
 — ALTER
 — ATIONS of
 the CON-
 STITU-
 TION.

But still in all these, there is a Qualification in its Limits, in all
 the Wheels of Government, there are Springs and Counterchecks, and
 occasional relaxations to enable them to yield to circumstances, and
 play their part in Government—Human vicissitudes could never be
 encountered, if they did not meet a corresponding pliability to fall in
 with them—The obligation would break—And these Qualifications
 are formed by all the Crisis, Emergencies, Situations of a Novel
 nature, which imperiously demand an appropriate discretion—These
 form the Qualifications on LEGISLATIVE RESTRICTION—These
 make the play in the Machine of Government. Qualifica-
 tions on Li-
 mitation.

But the great Range, that the EXECUTIVE takes, is in those Fo- Great
 reign climes, those distant scenes of action, where it imitates with oc- Range.
 casion, the different POWERS, and might easily be mistaken for every
 one of them—Where it is neither LEGISLATIVE, JUDICIAL, nor
 EXECUTIVE, and yet all of them—Not one in any degree, and yet pos-
 sibly, and at once, the whole of them—And if it be not so, the Country
 is ruined—If a Generalissimo be at the head of an Army, must not he
 make Treaties, Alliances, Forces? Must not he commit the Parent Nation
 at every moment? Whoever saw a Roman Proconsul judging in
 his Province, that might not have mistaken for the whole JUDI-
 CIAL of the Empire? Entire Continents at his award, integral
 Worlds at his disposal? Or if they had beheld their Commissioners
 elevating, and putting down Sovereigns, might not they have well
 esteemed the EXECUTIVE of the same Country?

Indeed in this way the EXECUTIVE is so great a POWER, that Comparable
 it might even almost compare with the LEGISLATIVE itself—Al- in some mea-
 sure with

the greatest
POWERS.

ways massed, always thrown into the most prominent light, it is the State, it is its force, vigour, and nerve, the absolute rebound, and jet of the Empire!

With LE-
GISLA-
TIVE, and
JUDICIAL
all to be de-
sired in GO-
VERN-
MENT.

What then shall we say of this POWER, how finish, and sum up the character of it? It is the ACTION, the POWER, the VIVID VIS of the State—Always ready to come forth at the Nod of the LEGISLATIVE, it represents the State, it is the Face and Front of GOVERNMENT—Till it so acts, GOVERNMENT is never felt—It is an airy INSTITUTE—To conclude all, it is GOVERNMENT—It is visible GOVERNMENT—As LAW, or LEGISLATIVE was the SOUL, JUDGMENT the EYE, so this is the BODY—Without the Promethean fire of the LEGISLATIVE, a lifeless mass, without the JUDICIAL, a Polyphemus in action, but animated by the one, and inspired by the other, all that we can wish in the scope of CONSTITUTIONS, all that we can desire, or desiderate in GOVERNMENT!!!

FINIS.



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